

COMPLAINTS PROCEDURES IN LOCAL GOVERNMENT

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ADDENDA/ERRATA

- p84 After para 2 add: "The National Code of Local Government Conduct (DoE 1975) has been superceded by the 1990 Code (see DoE Circular 8/90). The code has statutory status, and new councillors must declare that they are to be guided by it. The Local Ombudsman can find a breach of the code incompatible with good administration, and if maladministration is found, and a member is in breach of the code, the Local Ombudsman must name the member, unless it is considered unjust to do so."
- p106 line 3 should read: "During its existence, the Representative Body, supported by the Department of the Environment, was largely hostile to any extension."
- p123 line 8 should read: "1990" not "1971"  
line 10 should read: "(section 217)" not "(section 105)"  
line 29 should read: "Section 78 ...1990" not "Section 36 ...1971"  
line 33 should read: "(Planning [Listed Buildings and Conservation Areas] Act 1990)" not "(Schedule 11, para 8)"
- p124 line 1 should read: "(section 174)" not "(section 97)"  
line 3 should read: "(sections 289,290)" not "(sections 242, 245)"
- p138 At end of para 1 add: "Sunkin (1987) also found few cases of judicial review against local authorities, with 75, 69 and 120 cases each year in the mid-1980s (p439)".
- p262 After para 1 add: "There is now statutory protection for such clients. The Access to Personal Files Act 1987, which came into force on the 1 April 1989 enables an individual to know what is recorded about him/her in the manually maintained records held by a local authority for the performance of its social services functions. Regulations (Access to Personal Files [Social Services] Regulations 1989) set out, inter alia, how access is to be given, how the local authority's decision is to be reviewed, and what exemptions there are."

pp272-274, 277, 308 References to "County" should read "Country"

p272 At the end of paragraph 2 should be added: "and consolidated into the Town and Country Planning Act 1990".

p275 last line should read: "1990 Act" not "1971 Act"

p276 line 3 should read: "(section 55)" not "(section 22)"

line 6 should read: "1990, section 57" not "1971, section 23[1]"

line 9 should read: "Part VII of the 1990 Act" not "Part V of the 1971 Act"

line 12 should read: "(section 172[1])" not "(section 87[1])"

p284 lines 16-17 should read: "section 288 of the Town and Country Planning Act 1990" not "section 245 of the Town and Country Planning Act 1971"

p308 line 16 should read: "Section 66 of the 1990" not "Section 27 of the 1971"

line 20 should read: "section 66[7]" not "section 27[7]"

line 23 should read: "(section 71)" not "(section 29[3][6])"

line 24 should read: "Section 65 of the 1990 Act" not "Section 26 of the 1971 Act"

line 29 should read "(section 71)" not "(section 29[2])"

p309 After para 2 add: "Circular 22/88 (DoE 1988b) also recognised that there are occasions when publicity may be desirable, even though not required by statute, in particular where there would be a significant change in a homogeneous area, and where there could be adverse effects on the general character of an area (Appendix B, para 4)".

p336 Add: DoE (1988b) Department of the Environment Circular 22/88 General Development Order Consolidation: The Town and Country Planning General Development Order 1988 The Town and Country Planning [Applications] Regulations 1988 (London: DoE)

p347 Add: "Sunkin, M (1987) "What is Happening to Applications for Judicial Review" (1987) 50 Modern Law Review 432

## COMPLAINTS PROCEDURES IN LOCAL GOVERNMENT

Winifred Mary Seneviratne

### SUMMARY

This study examines the ways in which local authorities in England handle complaints from consumers of their services, and, in particular, looks at the extent of and use of internal complaints procedures. It is argued that complaints procedures are important because they are a part of a citizen's democratic entitlement, and that, as they are concerned with the resolution of the individual trouble case, they are a fit study for lawyers. Justifications are given for locating the study within local government, and the impact of organisational theory in this area is explored.

Other methods of dealing with consumer complaints are examined, and it is concluded that, although councillors, the courts and the Local Ombudsman all have a role to play in this area, there is still a need for authorities to have internal complaints procedures.

The major part of the study explores in detail the extent of authority-wide internal complaints procedures in local government in England. It justifies the use of these procedures, and compares the experiences of various departments within local government in relation to the use of departmental complaints procedures. In addition, there is more detailed study of social services departments and planning departments, not only in relation to complaints procedures, but also in relation to other practices which may reduce complaints.

Authorities, in general, did not have well developed complaints procedures, and there was little evidence of their use as part of the managerial process. There were, however, some authorities with good practices, and there is evidence of change within local government, which is now recognising the necessity of taking complaints seriously.

## ACKNOWLEDGEMENTS

I would like to express my thanks to a number of people for their contribution to this study. I am especially grateful to Professor Norman Lewis, not only for acting as my supervisor, but also for giving me the opportunity to become involved in the research project from which this study arose, and for his encouragement throughout the research. I would also like to thank a number of the staff at the Centre for Socio-Legal Studies, in particular, Diane Longley and Ian Harden for their help and support, and Lilian Bloodworth, Sue Turner and Julie Prescott, for preparing the drafts. I am also grateful to Ian Brownlee for his help in the final preparation of the text.

Although not named individually, I would like to express my thanks to all those officers and members of local authorities who took part in the research, together with the staff in central government departments and the Local Ombudsman's office for their valuable assistance.

Finally, special mention must be made of my two daughters, Anna and Sarah, for their patience and understanding during the course of the research, and I would like to thank them for not making too many demands on my time during the final stages of the project. Of course, any errors are entirely my own.

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## INTRODUCTION

This thesis arose out of a major study into complaints procedures in local government, jointly funded by the Department of the Environment, the Commission for Local Administration and the Economic and Social Research Council. Norman Lewis was the instigator of the study, for which I was the senior research officer, and it was conducted over a period of 18 months from January 1985.

The study itself (which will be referred to in the thesis as "the Sheffield Study") was to investigate the ways in which local authorities handle complaints from consumers of their services. Despite the fact that there had been calls for local authorities to adopt complaints procedures by the Local Ombudsman (see CLA 1978) and Redcliffe Maud (1974), there was little information about their operation, or indeed, as to the numbers which existed at all. The Sheffield Study was designed to discover how many authorities had complaints procedures, and how such procedures were interpreted and incorporated into the work of the authority and the various departments.

Throughout my work on the Sheffield project, I began to examine complaints procedures from the point of view of justice and due process. Complaints, or grievances, are unresolved problems where redress is needed, and grievance procedures provide an important mechanism for resolving these individual trouble cases. As a lawyer I am concerned with the study of the process of dispute resolution. Most lawyers tend to focus on the courts, the "formal" arena for settling disputes, and have paid little attention to less formal methods. Although some of the areas of conflict dealt with in this study could be processed by the courts, courts are not always appropriate or satisfactory for a number of reasons, which will be discussed fully in Chapter 6. The less formal and informal mechanisms of dispute resolution are fit subjects for study, and they ought to be studied, as it is at this level that vast numbers of disputes are processed.

Within local government the elected member has traditionally performed an informal method of dispute solving. Valuable though they be in this role, local councillors cannot provide a systematic method of complaint handling, a view which will be expanded upon in Chapter 4. The introduction of the Local Ombudsman system has also provided an additional avenue of redress where the complaint is one of injustice arising from maladministration. Its role will be discussed in Chapter 5, but it is worth noting at this stage that the Commission actively encourages authorities to develop and publicise their own complaints procedures, and encourages the use of local settlements.

As in the Sheffield Study, therefore, my main focus is on the use of formal complaints procedures within local government, and a central theme throughout the work is that the lack of procedures for the redress of grievances can be an injustice in itself, by denying an accessible avenue of complaint.

Another aspect of the theme of justice is a concern that rules are applied properly, and discretion is not exercised in an arbitrary fashion. Complaints procedures can be of use in this respect, as they are a mechanism for challenging the application of the rules, and thus a means of ensuring their proper application. They can be used to ensure that discretion is properly exercised, as all decisions, even those involving a high degree of discretion, are an exercise of judgement, arrived at for certain reasons. By allowing these reasons to be challenged, a complaints procedure would reduce the opportunity for arbitrary decisions.

Alongside the concern for justice is the belief that complaints procedures can be viewed as part of a citizen's democratic entitlement, a particular aspect of the democratic promise being openness and accountability. Accountability, the idea that democratically elected bodies are answerable for their actions, should not be confined to the process of elections. It should have a more immediate, and sometimes personal, impact, and one way of achieving this is for there to be a process by which decisions can be challenged



as they occur. Complaints procedures are thus one method of accountability; by allowing an opportunity for challenge, the whole administrative process will have to become more open and accessible.

Related to accountability is the concept of participation, and, indeed, these two words are sometimes used synonymously. However, participation and accountability are different in the sense that participation means involvement in the decision-making process, giving those concerned a chance to influence decisions and participate in the process of policy formation, whereas accountability is about a challenge to a decision which has already been taken. In this sense, complaints procedures are not directly concerned with participation, but their use may result in more consumer involvement in policy formation and implementation, as, if complaints are monitored, they can be used to provide a greater base of information on which to make decisions. The use of complaints procedures as an information system for management will be explored in Chapters 7, 8 and 9, which examine three separate areas of local government work. There is also some evidence to show that effective grievance procedures will indicate where resource responsibilities lie, and that this will compel some consultation about resource allocation.

Before leaving the issue of participation, it is worth noting the concern which has been expressed about the progressive rationalisation of public decisions, which has reached a point where social organisation and decision making might be delegated to computers and taken out of the arena of public debate altogether. The increasingly powerful bureaucratic state also undermines the possibility of participating usefully in decision making processes through the usual democratic channels such as political parties and elections. Complaints procedures may help to weaken this trend, by allowing decisions to be challenged, and in turn provide information for the decision making process. It might be thought that there is a contradiction between administrative efficiency and representative administration, but present developments indicate that there may be another side to this coin. It is not suggested that complaints

procedures will correct all wrongs, but they can assist in the search for efficiency; they can highlight sites of responsibility for decision taking and bring to light gaps in management systems. These themes will be explored more fully in Chapter 1.

The focus of the thesis is local government, the major reason being that the Sheffield Study, on which it is based, was set up specifically to look at complaints procedures in local authorities. In addition to this, as local government is democratically elected, it provides a useful focus upon which to explore the issue of democratic entitlement. As well as being a democratic body, local government is a major provider of services to the citizen, and it is important that the citizen has some opportunity, between elections, to express dissatisfaction with the services received, particularly as many of these services are delivered through the medium of discretionary powers.

This is discussed more fully in Chapter 2, but it should be noted that the Department of the Environment, which partly funded the Sheffield research, is particularly keen that local authorities establish complaints procedures. It may be cynical to suggest that their interest is more to do with enabling citizens to act as watchdogs over local authorities, rather than empowering citizens in a general sense. Indeed, it could be argued that complaints procedures are unhelpful in this sense, because they individualise and channel grievances into an acceptable forum, rather than confront what may be the real issue of the grievance, for example, a reduction in resources. They thereby divert attention away from policies about resource allocation, and concentrate upon issues of maladministration. I do not believe that this need necessarily be so, and this argument is not an argument against procedures; just a caveat about their use. Grievance procedures are not an alternative to other political processes; they should supplement them. It may indeed be that procedures can highlight the problem of scarce resources and bring the issue into the political arena. This raises the issue of the relationship between central and local government, and throughout the Sheffield Study the tension in

this relationship was manifested in a number of ways. This issue will be directly addressed in Chapter 2.

Those not concerned with the use of complaints procedures to empower citizens, may nevertheless be persuaded of their usefulness for another reason; namely, management information, as it is argued that complaints procedures can be used as a way of monitoring the performance of the organisation. This is another theme of the thesis, and Chapter 3 offers some theoretical basis for explaining the relationship between grievance redress and the managerial enterprise. The fact that an organisation has complaints procedures does not necessarily mean that they work, as it may be that insofar as the public are sympathetically treated, it is the result of a benign culture and a web of informal grievance handling. There may be a submerged body of complaints which administrative cultures help to suppress. When procedures are introduced there may, or may not, be resistance by members of the organisation; procedures may be highlighted or submerged. Attention must be paid to correcting this tendency where it happens and attention must be paid to the creation of a positive culture of rights, alongside well-publicised and accessible complaints procedures.

The major part of the thesis is devoted to the study of complaints procedures in local authorities in England. It draws to a large extent on material obtained during the course of the Sheffield Study, where the methodology adopted was postal questionnaires for the quantitative information, and interviews with local government personnel, and perusal of local authority documents for the qualitative information. This was supplemented by studies of consumer experiences of local authority procedures and of the local ombudsman systems. As the Senior Research Officer for the project, I was largely responsible for the direction of the research, and, although this thesis is based on the empirical work of the Sheffield Study, for which I was largely responsible, it explores developments which have taken place since the published report (Sheffield Report 1986), and places the whole issue of complaints procedures in a broader theoretical framework. It also

attends to the broader policy implications of complaints procedures, which the Sheffield Study, being essentially empirical and commissioned, largely avoided.

I also decided to restrict the thesis to a part only of the local authority business covered in the Sheffield Study, so, although that study examined five local authority areas in detail, this thesis concentrates primarily on two; social services and planning. During the course of the Sheffield research, I developed an interest in the area of social services, and as well as contributing to a large extent to the Sheffield Report (1986) as a whole, the chapter on the social services was my responsibility. It therefore seemed appropriate to pursue this service area in greater detail in the thesis, rather than presenting what would be comparatively superficial accounts of five service areas. In order to give a more balanced picture of local authority developments, planning departments were also chosen for further study. Both social services and planning departments are heavily legislated and regulated and have a number of appeal mechanisms, and both have a significant impact on the lives of consumers. However, in relation to complaints, the Local Ombudsman's published figures have repeatedly revealed large numbers of planning complaints, but relatively small numbers of complaints about social services. These two areas therefore represent contrasting areas for study, and present a more complete picture of the role of complaints procedures within departments.

Where necessary, throughout the thesis, I acknowledge the Sheffield Study in general as a source of information, and in particular, I occasionally refer to the Sheffield Report (1986) which was the published report arising from the research project.

## PART I THEORETICAL UNDERPINNINGS

### CHAPTER 1 GRIEVANCES, LAW-JOBS AND DEMOCRACY

#### Grievance Procedures

The purpose of this study is to investigate the ways in which local authorities handle complaints from consumers of their services. It is accepted that complaint can be a difficult concept to define, and that it is necessarily elusive and context dependant. A grievance can evolve according to both the circumstances and the individual actors' perception; for example, a statement that vermin are present in a council flat, is more likely to be interpreted as a complaint by a housing officer than is the same statement made to an officer in an environmental health department. I did not want to use a narrow, legalistic definition, and for the empirical research the definition used by the Commission for Local Administration in their 1978 Code of Practice (CLA 1978) seemed adequate:

"'Complaint' ... should not be too narrowly defined. The definition should certainly cover the small minority of matters which are clearly complaints and may end as allegations of injustice caused by maladministration and be referred to a Local Commissioner. It should also, however, cover those other approaches to Authorities, whether for advice, information or to raise an issue which, if not handled properly could turn into complaints." ( p3).

I am using "complaint" interchangeably with the word "grievance", and referring to an unresolved problem where redress is needed. There is a distinction to be made between grievance procedures, complaints procedures and appeal procedures (see Leak 1986, p86). Grievance procedures and complaints procedures are synonymous, with appeal procedures as a sub-group of these. What they all have in common is some formal provision for an aggrieved party to go to a higher level

or external body. The difference with an appeal procedure is that the body to whom the appeal is made has power to impose its decision in the disputed area. This study is looking primarily at grievance/complaints procedures, although reference is made to particular appeal mechanisms where appropriate.

Until recently there was little theoretical or empirical work in this area, but interest in grievance redress has increased over the last few years. (See Rawlings 1986 for a review). The emergence of a "complaints industry" (see Crawford 1988, p246) has been strongly influenced by consumer movements, especially in the USA, where there are highly developed complaints procedures within and outside of government agencies.

The American attitude to such procedures can be illustrated by the following quotation:

"No set of guidelines, rules or principles can assure individual gratification over policy decisions; but the allocation of adequate skills, resources, and procedures to the handling of citizen complaints and grievances can assure accountable, responsive government sensitive to the needs and concerns of the ordinary American and entitled to his confidence and support" (Rosenblum 1974, p5).

Indeed, enshrined in the American constitution, in the First Amendment's restriction on the power of congress, is the statement that "Congress shall make no law ... abridging ... the right of the people peaceably to assemble, and to petition the Government for a redress of grievances" (emphasis added).

So far as this country is concerned, and specifically local government, there were recommendations in the 1970s that authorities should develop their own internal arrangements for receiving and investigating complaints. One came from Redcliffe-Maud (1974), and

one from the Commission for Local Administration (CLA 1978), which even issued a code of practice.

Although there has been an upsurge of interest in grievance mechanisms over the last few years, there has, until now, been little empirical evidence about local government. There is a dearth of knowledge about the extent to which mechanisms exist, and the operation of those which do exist. We have scant knowledge of the way procedures are interpreted and incorporated into the work of personnel within authorities; whether there are different approaches and practices across authorities or between departments when they respond to consumer complaints. It may be that the existence of complaints procedures result in organisations using other methods to prevent disputes arising, by allowing, for example, consultation or in-built appeal mechanisms, or other "good practice" measures.

Although previous research in this area is sparse, what there is suggests that the response to the recommendations from Redcliffe-Maud (1974) and the CLA (1978) was negligible. Justice (1980) found that less than 20% of local authorities interviewed had taken significant steps to improve complaint handling in response to the CLA's code of practice. Others found that complaints procedures only existed in somewhat erratic and fortuitous circumstances (Lewis and Birkinshaw 1979a). And, for example, in education departments the "practices of grievance disposal were more or less arbitrary and operated independently of coherent notions of justiciability" (Lewis 1981, p99). Justice (1980) found such procedures "thin on the ground".

There is even less information on complaining behaviour. Friedman (1974) observed that the better educated and higher socio-economic classes tend to complain "more often and more successfully." Experience in the USA has led to the observation of the "squeaky wheel" syndrome, where the persistent complainers are the ones who obtain redress. It would be interesting to see if one can make general comments about complaining and complaints, and discover whether there are different types of complaining behaviour, and what

effect grievance procedures have on such behaviour. Thynne and Goldring (1987), writing about the "new" administrative law in Australia, believe that there has been a change in the climate and culture of complaining. As well as the Australian reforms increasing the number of mechanisms available for reviewing administrative action, they have also reduced the effect of some of the psychological and cultural barriers which have, in the past, acted as a significant deterrent to many of those who believed they were victims of the system.

I would sound a word of caution here. It is not inevitable that an appeal procedure leads to a culture of justice. Leak (1986) found, in his study of an appeal procedure in a local authority housing department that rather than producing any distinctive shift in attitudes or values, or importing a "culture of justice" into the department, the appeal procedure was largely assimilated to other modes of working already present. What was evident was the use of informal methods of resolving problems, and he concluded that the values of formal justice may be "just one set of competing values and remain marginal where they lack widespread support" (Leak 1986, p511). Therefore, in implementing such procedures, attention must be paid to this factor, and an attempt made to create a positive culture of rights.

It would also be interesting to see what role other agencies play, for example, the courts, the local ombudsman, and elected members, in the process of grievance resolution. Certainly, within local government, the councillor has always been seen traditionally as a method of dispute solving. Valuable though the member might be, increasing specialisation and complexity has meant that not all issues can be addressed by local councillors, who are busy people by definition. Indeed Widdicombe (1986) found that on average councillors spent 74 hours on council duties in a typical month, with 13 of these being spent on "electors' problems, surgeries, pressure groups" (Research Volume II p42). By its nature, this method is unsystematic, which militates against any claim that it ensures access to justice.



The concern for procedures can be set in the context of a general concern about the shift away from the democratic basis of local government (see McAuslan 1980) towards the corporate management style espoused by Bains (1972). Within this approach, the role of elected members has been curtailed by the concentration of power in a central policy committee, consisting of a few key councillors, and by the establishment of management teams of chief officers who decide what is to be put before the committee (Bains 1972, para 4.14).

Before developing these issues, this is perhaps an opportune time to justify the role of law in this area, and my interest as a lawyer. I approach complaints procedures from the viewpoint of a lawyer recognising the importance of law as a political resource (see Lewis 1981, p104), with potential for influencing political change. Thus, I agree with Cotterell and Bercusson (1988) that in modern societies "law is a primary means by which institutions are defined and protected, established policies are turned into state structures of guiding principle, and strategies are implemented through the elaboration of rules and regulations" (p2).

Others have recognised that lawmakers is a term which not only applies to judges and parliament, but that it also includes "the officialdom of municipal government ... of social agencies ... of schools, of governmental health and welfare programmes" (Cahn and Cahn 1964, p1333). In the past, lawyers have attempted to distinguish between courts and tribunals, and justice and administration, but "that distinction, while never theoretically coherent, has become observably untenable" (Lewis 1981, p91).

Local administration, along with other state activity, ought to be the concern of lawyers, as administrative bodies constitute a major mechanism for decision-making in society, and disputes will inevitably arise. The lack of any procedure to deal with such disputes is an injustice. The argument for a formal complaints procedure in this context is a recognition that "High Rules of Law" administered by the courts, are not always appropriate or satisfactory (Lewis 1981).

Friedman's classic study on the sociology of complaining , in which he made a comparative analysis of Britain and Canada, found that the "courts of the land apparently are not the place where the citizen ... looks for administrative justice" (Friedman 1974, pp9-10). The vast majority of citizens in his survey were more likely to appeal up the administrative hierarchy or turn to their elected representatives.

According to Kamenka and Tay (1975) the central problem for advanced industrial societies in the twentieth century is no longer that of private property; it is that of administration and social control. More recently, Cotterell and Bercusson (1988) have been concerned to examine the role of law in relation to democracy and social justice, and in particular the forms of regulation and institutional forms which are "available, feasible, and appropriate to secure as fully as possible the capacity of each citizen to act autonomously ... in determining the conditions which shape her or his life" (p2).

Lawyers may therefore, and law must, have an important role to play in examining the operation of administrative bodies, and lawyers ought also to be concerned with grievance resolution in general, which is a perennial problem in any society. As a theoretical basis, Llewellyn's law-jobs theory provides a valuable yardstick for looking at complaints mechanisms in society, and I will now briefly elaborate on this theory.

#### Llewellyn and Law-Jobs

For Llewellyn, if society was to remain effective:

"you must manage to deal with centrifugal tendencies, when they break out, and you must manage, preventively, to keep them from breaking out. And that you must effect organisation, and that you must keep it effective. And that you must do all this by means which do not choke off, but elicit, your necessary flow of human energy" (Llewellyn 1940, p1373).

Basically, then, Llewellyn's theory is that in every group or society, certain jobs have to be performed if the group is to remain cohesive and stable. These needs are fulfilled by the Law-job, and "law-jobs" are the means of meeting these needs. Thus, law can be seen as "a series of socially necessary tasks to be performed in any given organisational framework" (Harden and Lewis 1984, p2). The main concern of the "law-jobs" is the fundamental one of survival:

"the job must get done enough to keep the group going."  
(Llewellyn and Hoebel 1941, p292)

Beyond this main concern, Llewellyn identified five law-jobs (see Llewellyn and Hoebel 1941, p293), although Lewis (1981) has categorised them into four main ideal types: disposition of the trouble case; preventive channelling; the constitution of groups; goal orientation, that is, a concern with the policy, goals and objectives of the group at large (p92). The law-jobs can also be categorised as procedures "for the resolution of grievances, for planning and monitoring, for describing the legitimate anatomy of groups", these being the necessary conditions of social intercourse (Harden and Lewis 1984, p2).

For the purposes of this study, it is the first law-job, "the disposition of trouble cases", as identified by Llewellyn, which is important, as grievance procedures are primarily mechanisms for handling individual trouble cases. This particular law-job was seen as "garage-repair work" (Llewellyn 1940, p1375). The trouble case itself involves some grievance or dispute, the trouble being "individual" trouble. Individually the grievance may not pose any threat to the group, but collectively and cumulatively they might. Thus, individual trouble cases can present trouble for the whole group, as they threaten to disrupt the established order.

The courts, of course, are one example of this particular law-job. However, they are only a more formal method than others. Informal methods of dispute resolution, those which are "administered outside

courts by such officers as prosecutors, welfare administrators, immigration officers, economic regulators, and officers who award subsidies" (Davis 1975, p1) should also be encompassed by this particular law-job, and, as mentioned previously, this is an area which has tended to be ignored by lawyers.

Complaints procedures then are concerned primarily with handling the individual trouble case. They are necessarily reactive, in that people will use the procedure only if they have a particular grievance. A secondary function, that of "preventive channelling", "producing and maintaining a going order instead of a disordered series of collisions" (Llewellyn 1940, p1376), may be to produce generalistic rules of conduct, but this is very much secondary, as rules will often only be made after a particular grievance has progressed through the procedure. Rules will then be made about a perceived problem after an aggrieved person has had his/her particular problem adjudicated upon. This relies upon an individually aggrieved person coming forward. It may be worth noting here that one problem experienced by the Local Ombudsman is that the system relies upon an aggrieved individual coming forward, and they are unable to investigate on their own initiative, although recently there have been attempts to encourage voluntary bodies to sponsor complaints from the less articulate members of society. Thus, the secondary function of a complaints procedure, the production of generalisable rules, is restricted by the rationale of the individual trouble case.

Another problem with this particular law-job is that it appears to offer no alternative to the status quo. Because of this, it could be argued that complaints procedures could be used as a sop to consumers, in that they individualise and channel grievances into an acceptable form, rather than confront what may be the real issue of the grievance, for example, a reduction in resources. Wynne (1982) recognises the ritualistic role of this particular law-job, in his work on the use of the judicial inquiry, to handle the "trouble" of the issue of nuclear power. He sees the process as a form of ritual secrecy, but yet believes it is necessary in public life.

"The rituals encasing such artificial frameworks tacitly mediate otherwise conflicting forces, leading to the chronic postponement of open confrontation. To the extent that they succeed in moulding human behaviour to avoid violent confrontation, rituals ... may possess their own truth" (p viii).

While there must be some value in avoiding open conflict in society, complaints procedures, being based on an individualistic ideology, "bourgeois individualism" (Kamenka and Tay 1975), or the "ideology of private property" (McAuslan 1980) may mask the real problem. Complaints procedures could make better citizens, but they could also feed individual greed; in other words, furthering the aims of individualism rather than collectivism. As examples, an individual's pursuit of the right to buy a council house may override an elected authority's policy; the parents' right to express a preference for a particular school for their child could override the local education authority's aims and objectives. Lynes (1976), looking at the work of the Unemployment Assistance Tribunals in the 1930s, concluded that, although they looked at the individual trouble case, they were set up as a deliberate act of the government seeking to provide a safety valve, to divert criticism from the cuts it was introducing in the rates of benefit. Consequently, trouble for the government was averted through a device set up to handle the trouble of individuals. Birkinshaw (1985) also notes this method of using grievance procedures to "transmute conflicts of political, economic and social movement into disputes between individuals based upon individual entitlement and duty" (p187 original emphasis).

A further concern is that complaints procedures are an attempt to move even more power from the local level to the centre, with individual citizens acting as watchdogs over local government's activities by being able to pursue individual complaints. This tendency has been noted by Gamble (1989) who believes that the present government is intent on weakening "the autonomy and legitimacy of all intermediate institutions", thus "removing the institutional basis for any opposition to policies determined at the centre" (p17). Every organ

of government (including local government) has been reduced "with the exception of the power of the central government itself" (p18), thus bringing about a change in the "autonomy and legitimacy of most intermediate institutions" (p19).

Alarming though such scenarios appear to be they are not arguments against procedures as such. Grievance procedures are not an alternative to other political processes; they should supplement them. Empowering citizens in such a way is a double-edged sword. Despite the emphasis in some circles on individualism, such procedures could result in better citizens; procedures can strengthen the capacity of individuals to challenge and the challenge may not stop at the local authority. They may result in citizens forming interest groups, and alerting some to the notion that collective action is the way forward.

To conclude this section, the disposal of trouble cases in local government, as elsewhere, is a fit subject for study by lawyers. As well as fulfilling the "trouble case" function, complaints procedures can be seen as an aspect of the democratic promise, part of that promise being accountability, openness and participation. They can be used as form of citizen enfranchisement, making government agencies more responsive by allowing some input in the processes which determine modes of official behaviour (Cahn and Cahn 1964, p1333).

I would concur with Rosenblum (1974), who concludes that "complaint handling, as a dimension of meritorious performance of services to the people, can reduce alienation of individuals from their government, enhance their awareness of opportunities for redress and heighten their participation in the subtle and complex processes of democracy" (p43). Some of these themes will be explored in the next section.

## Democracy

It is worth restating that this is a study of local government, and that, as such, it prompts a discussion of the nature of democracy. The Royal Commission on Local Government in Greater London spoke of local government being "an instance of democracy at work", and that "no amount of potential administrative efficiency can make up for the loss of active participation in the work by capable, public-spirited people, elected by, responsible to, and in touch with those who elected them" (Royal Commission on Local Government in Greater London 1960, p59).

This local aspect is often emphasised, and indeed, it sometimes takes on paramount importance:

"Above all else, a genuine local democracy implies that decisions should be taken - and should be seen to be taken - as locally as possible" (Government White Paper 1971, para 8).

This point has, in turn, been emphasised by the Council of Europe, which was convinced that "municipal autonomy is one of the cornerstones of democracy in European countries", and judged it necessary to:

"strengthen representative democracy at the local level by bringing decision-making as close as possible to the citizens and involving citizens more directly in the management of the affairs of their community while safeguarding efficiency in the conduct of local affairs" (Council of Europe 1981, Recommendation No R(81)18).

In this country, it is seen as important to "return power to those people who should exercise decisions locally" (Government White Paper 1971, para 8). Indeed, as Buxton (1973) points out, the concept of local democracy seems to rest more on the need for government to be local, than upon any precise analysis of what is required for a system of local government to count as truly democratic (p260).

Democracy itself is a rather elusive concept, but at its basis is the idea of legitimate government. Participatory government, where everyone participates in the decision-making process, would be seen as a legitimate form of democracy, although such a form is impossible in a complex modern governmental organisation. Representative democracy is therefore seen as a necessary form, because it is clearly impossible to involve all the interested parties in the decision-making process. This form demands that the final decision making power should be in the hands of elected representatives, who can, at certain specific times, be judged on their record by the electors, and be dismissed by those electors, if the record is not satisfactory. In addition to this, there is a form of democracy that demands that individuals should be able to obtain information about the government's actions, and have the power of bringing their views and requirements on specific issues to the attention of those who govern, with an expectation that they will be listened to.

Many are coming to believe that "the traditional representative model of local government is no longer adequate to meet the demands which are increasingly made by its electorate for policy-making that responds to felt needs" ( Lewis and Harden 1982, p82), because "no elected body can be expected to represent the sole legitimate forum for resolving conflicting social and economic interests" (p66). Representative government is an incomplete basis for fulfilling citizenship, and there may be a need to involve the public more actively in the political process. Ranson and Stewart (1989) raise the issue of whether democracy in its basic form is "an adequate basis for our society" (p16), because the views of the electorate can be expressed only occasionally and in general terms. There is no adequate opportunity for participation and expression of public views, which are necessary to strengthen democracy during a period of social change.

In a representative democracy, therefore, there are the twin ideals of accountability (where the electors receive an account of what has been done, and make decisions on the basis of it), and participation, which



is "vital to the successful development of services which are sensitive to local needs" (Seebohm 1968, para 127). These two concepts will be examined in turn.

Accountability, that "assumed feature of the British way of public life" (Lewis and Harden 1986, p239) is central to our idea of democracy. At its most basic level, it means that governments, or any other elected body, will be answerable to their electorates periodically, through the process of elections, when not only their future conduct, but also their past behaviour will be the subject of scrutiny. In other words, although the citizen may not be able to participate in the original decision-making process, s/he can demand an account of it.

However, accountability and "answerability" cannot be confined to the process of elections, because the "logic of choice . . . . assumes that freely accessible information must characterize the political process" (Harden and Lewis 1986, p42). The ideal of accountability, even in its narrower sense, implies an openness in decision-making. The reason for this assertion is that where there is representative government, it is implicit that "choice of representative is paramount" (Lewis and Harden 1986, p9) and choice can only be meaningful if there is a full record of the candidates behaviour in the decision making process. One aspect of this openness in decision-making is to have procedures for challenging decisions as they occur, as such a procedure would presuppose that reasons are given, and thus that there is some justification for them. Thus Robson (1988), in his research into the housing department of a London Borough concludes that it is "crucial for a decision-making body to have credibility and this, it is suggested, can only be established by showing that it approaches cases honestly and with integrity and comes to its conclusions uninfluenced by outside pressures" (p21). This is also arguably the basis for judicial review. A procedure to challenge decisions would therefore help to open up the process of decision-making, and thus, increase the level of accountability.

Openness is also important because the power of bureaucrats lies not in their formal position, but in their control of information, and thus in their ability to distort and conceal it (see Breton and Wintrobe 1982, p91). Openness is not only necessary to control the bureaucrats in this sense, but it is necessary so that the electorate have more information upon which to make a decision about their representative when it comes to the process of election.

Allied to openness is a duty to state reasons. Indeed, Justice (1971) has claimed that no single factor "has inhibited the development of English administrative law as seriously as the absence of any general obligation upon public authorities to give reasons for their decisions" (p23, para51). The advantage of such a duty is that it is likely to ensure that when a decision is made in an individual case, some record will be made of the factors taken into account in making that decision. This will give some assurance that the decision will be reached after proper consideration of the relevant facts. When reasons are given, the person affected is in a far better position to decide whether or not to seek a review of the decision, than a person who is totally ignorant of the grounds on which the decision was made. Thynne and Goldring (1987) conclude that the public right to information may actually reduce the need for review, because officials, knowing the decision can be scrutinised, will act better. Justice (1971) too recognised the beneficial effect that the existence of a duty to state reasons has "both on the quality of the decision and upon public confidence in the whole process" (p23, para51), and believes that this duty should be recognised as an "inherent element in the concept of natural justice" (p23, para51).

Ranson and Stewart (1989) conclude that the condition for "democratic and accountable government is open government"; that a condition of active citizenship and public choice is the right to know and the publication of information; and that secrecy "undermines citizenship and accountable government" (p18). A similar conclusion is reached by Harden and Lewis (1984):

"in Britain the underlying expectations of openness and accountability mean that the activities of all public actors and their agents are the proper subject of public scrutiny unless a strong case to the contrary can be made out, that case in turn having to run the gauntlet of public and reasoned scrutiny" (p20).

The Franks Committee, when looking at tribunal proceedings, also recognised the importance of reasons:

"A decision is apt to be better if the reasons for it have to be set out in writing because the reasons are then more likely to have been properly thought out" (Franks 1957, para 98).

And the Council of Europe has also recommended that the reasons on which administrative acts are based should be available to the public. (Council of Europe 1987, Recommendation No R(87)16 Section VI).

Galligan (1982) too emphasises the importance of reasons, his standpoint being the inadequacy of traditional views of administrative law in this area. In order to have accountability, the power-holder must explain and justify his use of power, and in order for there to be effective participation, the power holder must have before him a full view of the public interests bearing upon the exercise of his power (pp270-271). Thus, the concept of accountability "can be developed in terms of the constraints that the requirements of reasoned decision-making impose on the administrative authority" (p271), and a commitment to reasons "generates a basis for criticism and facilitates judicial review" (pp272-3). In short, account cannot be fully meaningful in the absence of reasons.

As with most systems of accountability, this is a challenge to a decision once it has been taken, and it does not allow for participation in the decision-making process. In his study of an appeal procedure in the Housing Department of Sheffield City Council, Leak (1986) concluded that the accountability produced by the appeal

system was upwards, in the sense that it allowed senior management and members to monitor the decisions made by the "street level bureaucrats", rather than downwards, towards the client (p28). This is particularly so when the body determining the appeal is simply a higher level in the same institution as the original decision-makers. Where the appeal is to an external body this, "in theory at least", seems to "portray figuratively accountability of decision-maker to a wider audience" (Leak 1986, p109).

Just as there is a basic assumption that government agencies should be accountable, so there is a similar assumption that there should be some measure of participation in the process of decision-making. Indeed, accountability is sometimes used synonymously with participation. However, these are different concepts, in that participation means involvement in the decision-making process, whereas accountability is about a challenge to a decision which has been taken. As an ideal, participation is about the involvement of the relevant parties in decision-making, so that they can affect the future course of action. In practice, it is not just a matter of discovering who are the "relevant parties", but what kind of "involvement" is envisaged. Participation means more than knowledge which is fed to decision-makers for them to examine, use or ignore as they feel fit. It must involve control of the decision-makers, "to ensure that the values which are incorporated in any schemes are those of the people affected by it" (Hill 1976, p98).

Participation is seen as "vital to the successful development of services which are sensitive to local needs" (Seebohm 1968, para 137), but this too is double-edged, as, besides being a form of legitimation it can also produce "an understanding and co-operative public", as objections may be "anticipated or eliminated at the formal stage of public enquiry", making the process "smoother, less contentious and speedier" (Skeffington 1969). Despite this view, I would concur with Cotterell (1988) that the "commitment and moral involvement of the regulated population is necessary in order to legitimise modern administration" (p20), and that "collective

participation of citizens in public decisions ... appears as the only means by which ... citizens - insofar as they are necessarily objects of regulation, can also become subjects in the creation of regulation" (p20 original emphasis).

Of course, this leaves open the question of how participation can be achieved, and it has to be admitted that the taking of the decision is only one aspect of participation. Setting the agenda for discussion could also be included, as could procedures where views are taken into account, even though those providing the information do not take part in the final decision. Insofar as participation is used in the sense of giving those concerned a chance to influence decisions and participate in the process of policy formation, complaints procedures are not about participation. However, if participation is seen in the wider context of information gathering, complaints procedures can be used to provide a greater base of information on which to make decisions, as they can provide feedback for the decision makers in making policy. Experience in Chicago and the work of the National Consumer Council indicate that the monitoring of complaints can help shape policies with the consumer interest in mind. To use complaints procedures in this way may bring about more consumer involvement in policy implementation. This will be discussed more fully in ensuing chapters.

Participation is thus seen not only as a means of reducing the relative power of the executive elite, but also as a way towards a more general democratisation of society. Pateman (1970) believes that for a democratic polity to exist, it is necessary for a participatory society to exist, which means a society where all political systems have been democratised, and socialisation through participation can take place in all areas (p43).

There is also an educative function, in that participation in local decision-making trains individuals for assuming responsibility in the wider societal decision processes. It may educate those who participate, thereby making them permanently able to defend their own

interests (see Abrahamsson 1977, p199). In fact, some would go as far as to argue (see Bachrach 1969) that democracy is realised to the extent that the citizens participate in decision-making, and thus, participation becomes a goal in itself. However, Bachrach (1969) admits that democracy has to be seen in terms of both results and process (p3). The public interest is measured by both the soundness of decisions reached in the light of the needs of the community, and also by the scope of public participation in reaching them. It is only if all citizens participate in the political decision-making process that political decisions can be guaranteed to reflect the interests of the mass of the people. It also develops the individuals' personality, making the citizen aware that s/he is part of the total society, so that s/he feels not only responsible for him/herself, but to society at large.

Complaints procedures can be used, therefore, as a way of legitimising bureaucratic conduct, in the sense that the provision of mechanisms for complaints and grievances contributes to a reputation for fair dealing. As Lipsky (1980) expresses it:

"The development of standards for client treatment, rights to appeal and procedures for administrative regularity seems to develop in proportion to client allegations of arbitrariness and unfair treatment. By developing procedural rules, agencies may in fact protect the rights of some clients, but they also gain legitimacy in continuing to act with most clients as they did before" (p43).

The idea of legitimation is perhaps best expressed in terms of Habermas' ideal speech situation, and it is to this that I now wish to turn.

Habermas and the Ideal Speech Situation

For Habermas (1976), the idea of rational discourse was envisaged as a full and open discourse among all, on an equal footing, without distortion in communication. In this way there would be a triumph of reason and truth. The ability to reason and make decisions should be based on the facts known about the situation; distortion occurs when the facts of the situation are hidden from some or all of the participants, and when rules prohibit people from participating fully in the decision-making process. The goal is the equal participation of all concerned in the decision-making process. This is a universal rationality in which everybody participates equally, a situation in which communication is not distorted, in other words, an "ideal speech situation".

Habermas (1970) expressed concern about the progressive rationalisation of public decision-making which has reached a point where social organisation and decision-making might be taken out of the arena of public debate altogether. The increasingly powerful bureaucratic state also undermines the possibility of participating usefully in decision-making processes through the usual democratic channels, such as political parties and elections. There is a growing contradiction between administrative efficiency and representative administration. As an example of this, Grace and Wilkinson (1978), in their study of the operation of social services departments, as an aspect of the provision and use of legal services, found that according to social work ideology, clients do not need legal services, as the social worker provides the service based on a professional evaluation of the clients's problem and needs (p3). The authors, however, do not see social work agencies as social structures in pursuit of an objectively defined and corporate goal in a highly rational and co-ordinated way (p4), and therefore some input by the client is necessary. A valuable feature, therefore, of a grievance procedure is its use as a form of citizenship. Complaints procedures may act as a form of legitimation, by allowing a challenge to decisions, which in turn may feed into the decision making process.

Habermas has been criticised (see Craib 1984, p210) for reducing politics to a matter of communication, and making it appear that if only there was more understanding, that would solve many problems. However, despite these criticisms, his theory can be used to define the conditions of democracy, and evaluate a particular institution in these terms, and allow that they are democratic to the extent that they conform to the ideal.

What is central to Habermas' theory, then, is the value of reason in public discourse (see Ranson and Stewart 1989). Diverse interests are encouraged to reason with each other in order to reach mutual understanding and agreement, and through this process, "the public domain secures the authority and legitimacy of public choice in society" (Ranson and Stewart 1989, p12). So, in attempting to come to a "rational" decision, it must be supposed that the outcome of discussion will be the result of the force of better argument, and not of accidental or systematic constraints on discussion.

Prosser (1982) emphasises the importance of participation and accountability in this context (p11). The concept of participation is centred around the development of institutions for the expression of the ideal of discussion free from domination; that is, there is equal power to affect decisions given to all affected. Accountability is about the development of means to ensure that justifications, in the forms of reasons, must be given for all actions. Accountability is thus dependant on the ideal of participation. Participation is about involvement in the decision-making process; and accountability is the reasserting of the legitimate expectation of participation, an expression now common in other contexts too.

Coupled with the arguments about grievance procedures being a part of the democratic entitlement is the belief that the lack of any procedure for the redress of grievances is an injustice. Davis (1975) maintains that the "largest clusters of injustice ... lie in the administrative application of governmental power in the absence of systematic fact-finding and beyond the reach of previously existing



law that controls the result" (1975, p3). Others have spoken about filing cabinets being "filled with examples of systematic maltreatment and abuse and denial of rights for which there is no straightforward legal redress" (Community Development Project 1977, p3). Local government, as well as being a democratic body, is a major provider of services to the citizen, many of which occur through the medium of discretionary powers. It is a denial of justice if citizens have no opportunity to challenge decisions taken in relation to them.

One aspect of justice is the elimination of arbitrary decision-making, and an insistence that rules are properly applied, and that discretion is exercised fairly. Bureaucrats, according to Weber's ideal type, are subject to strict systematic control and discipline, and enforce the law "without hatred or passion and hence without affection or enthusiasm" (Weber 1947, p340). However in reality the power of officials and the nature and the work they have to do allow to officials a high degree of discretion. The rules versus discretion debate has occupied legislators and administrators for some time (see Jowell 1976), and there is no doubt that the "relationship between discretion and policy has always been the subject of heated debate in the administrative process" (Lewis 1973, p275).

A public officer has discretion "whenever the effective limits of his power leave him to make a choice among possible courses of action or inaction" (Davis 1969, p4). Discretion is seen to be preferable to rules in some situations because individualised justice is thought to produce better results than precise rules. However, the problem is that many civil servants have little training for exercising discretionary tasks and whereas rules confine the scope of discretion "appeals and complaints secure the maximum scrutiny of decisions, and the presence of explicit 'professional' standards, even if they are not always adhered to, provides some basis either for checking deviant officials, or, if the standards are unacceptable, attacking the whole system" (Hill 1972, p85).

Davis (1969) admits that discretion is necessary, but that the relationship between discretion and rules is seriously out of balance and in need of rectification through various strategies of confining, structuring, and checking discretion. Interest in discretion became heightened during the 1970s, especially with Reich's (1964) concept of "new property" rights in, for example, welfare benefits. These formal rights were seen to be fit subjects for adjudication. Without wishing to discuss in any detail the relative merits of rules and discretion, it could be argued that one way to ensure that rules are properly applied is to allow challenges to the application of the rules. Administrative bodies constitute a major mechanism for decision-making in society, and the officials within them have a high degree of discretion. However, even highly discretionary decisions are an exercise of judgement, arrived at for certain reasons. A complaints procedure may allow a challenge to these reasons.

It could be argued that complaints procedures may result in a reduction in discretionary decision-making to the detriment of the consumer, because the organisation, in an attempt to defend itself, may formalise systems and have standardised rules, and that this would make matters worse for consumers. Such claims will have to be supported by empirical data, but it is not inevitable that procedures result in a reduction in discretionary decisions, to the detriment of the consumer. It can be accepted that the allocation of scarce resources will necessarily involve a high degree of discretion, but the checking of this need not involve a highly rule-based system. A decision need not be rigid and rule based. As I have said, decisions are an exercise of judgement based on reasons. Because complaints procedures may allow a challenge to these reasons, it does not necessarily mean that there is no room for discretion. This is a call for reasoned decision-making and for discretion to be properly applied. The ensuing empirical data support this contention.

Adjudication provides an opportunity for scrutiny and for accountability of the decision makers to their clientele and to the public, and is a method of checking the arbitrary exercise of

discretion without the imposition of inflexible rules. The concern therefore is to improve the quality of justice which is administered outside the courts, by those in charge of scarce resources, and one way of doing this is to allow for a mechanism of review or complaint, (see Davis 1975, p1), which may "promote consistency of decision-making within the law" (Lewis 1973, p283). Thus, the introduction of administrative review will help to improve the quality of primary decision-making.

To conclude, this chapter has sought to justify the concern of lawyers in the area of grievance redress outside the courts. It has also examined the use of complaints procedures as an aspect of justice, in the sense that there should be mechanisms for the redress of grievances, and also as an aspect of a citizen's democratic entitlement, with one aspect of the democratic promise being openness and accountability. The focus of the research was local government, which, being a democratically elected body, provides a useful area in which to explore the issues of democratic entitlement. The following chapter will discuss the study of local government in more detail.

## CHAPTER 2 LOCAL GOVERNMENT-ITS AUTONOMY AND ITS STUDY

### Introduction

The focus of this study is local government, the reasons for this being practical as well as theoretical. Local government is more accessible than central government, both to the researcher and to the citizen. Its work is not covered by the Official Secrets Act 1911, and the recent Local Government (Access to Information) Act 1985 ensures that in theory at least, there is freedom of information for local government activities. Although the full effects of this legislation were still being thought through at the time the empirical research for the Sheffield Study was being carried out, there was certainly no reluctance on the part of local authorities to co-operate with the research.

Local government is a major mechanism for decision-making in society and it constitutes an enormous bureaucratic structure. For example, the large urban authorities administer services to populations of over half a million people (population estimates for mid-1983 were 1,012,900 for Birmingham, 714,000 for Leeds, 542,700 for Sheffield, 457,500 for Manchester, 502,500 for Liverpool and 463,900 for Bradford), and even the smallest rural authority (Teesdale) has a population of 24,700. (Figures from the Municipal Year Book 1985). However, unlike other administrative bodies like government departments and health authorities, it is directly elected. When we study local government, therefore, we are not only studying an administrative body, but also a democratic institution, with democratically elected councillors responsible for the delivery of services, and whose citizens have an opportunity to influence decisions in a much more direct way than in central government.

Although all local authorities are the statutory creations of Parliament and have no independent status or right to exist, there is that element of local choice, and it is argued (see Widdicombe 1986,

p50) that it is an effective means of delivering services, because it has the ability, unlike non-elected systems of local administration, to be responsive to local needs. Local government now concentrates more on services where responsiveness to the public is most important (eg social services) and less on those where the main requirement is simple efficiency of output (eg public utilities). Local government is thus different from local administration, but, as Widdicombe (1986) warns, it "needs to be able to demonstrate that it is a more effective means of government than local administration" (p55).

The study of local government also highlights the tension between democracy and efficiency: the problem of striking a balance between efficiency and the interests of individuals in matters of public administration. This tension is represented in an acute form in local government: it is big business, but touches the lives of individuals at key points. Local government is not, however, concerned solely with efficiency; indeed, the Audit Commission's function in relation to local authorities is to make recommendations for improving the "economy, efficiency and effectiveness in the provision of local authority services" (Local Government Finance Act 1982, s20). Widdicombe (1986) emphasised the important distinction between efficiency and effectiveness, which may resolve some of the apparent tension. Efficiency is concerned solely with output, but "effectiveness is concerned also with the meeting of needs" (p50). Local government should therefore allow the local view to be expressed, because if it does not provide for sufficient local democratic self-expression "it ceases to be sufficiently distinct from local administration" (Widdicombe 1986, p56).

#### The Structure of Local Government

Ever since the reorganisation of local government in the 1960s and 1970s, which was responsible for its present structure, (subject to the recent alterations made by the abolition of the GLC and metropolitan counties) local government has been newsworthy. The impetus for reorganisation came in the 1960s, this being partly a

result of the recognition of the importance of education and the social services, resulting in increased public expenditure in these areas, and also an awareness by national politicians of the difficulties of administering national policy through small and inefficient units of local government (see Buxton 1973, p229). In 1966 the Royal Commission on Local Government was appointed, presided over by Lord Redcliffe-Maud (Redcliffe-Maud 1969). Its terms of reference were wide: it had to take into account the structure of local government, and to make recommendations for authorities, boundaries and functions, bearing in mind the need to sustain a viable system of local democracy (Redcliffe-Maud 1969, piii). Much of the Commission's report was incorporated into the Local Government Act 1972, although the recommendation for a unitary model was rejected in favour of a two-tier model of counties and districts.

After 1974 the new metropolitan counties (South Yorkshire, West Yorkshire, Greater Manchester, Merseyside, West Midlands and Tyne and Wear) had the following functions: highways, refuse disposal, traffic, transport planning, weights and measures, some town and country planning (structure plans and some local plans), fire and police. The metropolitan districts were to have education, housing, social services, cemeteries, markets, refuse collection, town and country planning (most local plans and development control), recreation and environmental health. The metropolitan counties have now been abolished, although they were still in existence at the time of the research. The 44 non-metropolitan counties have the same functions as the metropolitan counties, with the addition of education and social services, leaving non-metropolitan districts without these functions.

Although it achieved a major reorganisation of local government, the 1972 Act had little effect on the internal organisation of the authorities. This aspect was explored by a working group set up by the Department of the Environment and local authority associations, and chaired by Bains. In its report (Bains 1972), Bains suggested that although the ultimate decision-making body of the local authority

is the council, each authority should have a central policy committee, which would act as a steering committee for the full council (Bains 1972, para 4.14). These committees, usually called Policy and Resources, or General Purposes, are now important features of local authority internal organisation, and, as their name often suggests, they perform a policy-making role, rather than acting as a watchdog and review body for the general performance of the authority.

Bains also supported the concept of a chief executive to act as a co-ordinator and leader of a management team, consisting of chief officers of the various service departments. The role of such an officer was not fully elaborated upon by Bains, but rather it was suggested that there was "a great deal of room for discussion and argument about just what powers and authority he should have and many authorities have avoided the issue by not spelling them out" (Bains 1972, para 5.10). The ambiguity of the role can be seen from a cursory look at the list of officers in the various authorities. Although most authorities have a chief executive, the role is sometimes combined with that of the town clerk, or occasionally with that of the director of finance/treasurer.

Widdicombe (1986) noted the "almost universal practice since local government reorganisation for local authorities to appoint a chief executive as their most senior officer" (p142). The great majority of these are solicitors by background, and it is unusual for them to have any departmental role. Their extra-departmental role is seen as having the important function of welding local authorities "into a corporate whole rather than a loose federation of service departments" (p142). Widdicombe admitted that their role had never been totally clear and noted the "considerable variety" in their roles, with some having clear management authority over all staff, while others were more "primus inter pares", with a role not dissimilar to that of the former town and county clerks (p143). During the course of the Sheffield Study this diversity was noted: one chief executive saw his role as "keeping the council solvent and legal", and leaving the chief officers to "get on with their job".

Widdicombe (1986) recommended however that there should be a statutory requirement that local authorities appoint one of their officers as the chief executive, who should be the head of the paid staff, with clear authority over other officers, and having "ultimate managerial responsibility for the way in which officers discharge the functions of the Council" (p144). One reason for this is that public expenditure constraints necessitate the taking of decisions more on the basis of a balance between services and expediency "rather than simply on professionally judged merits" (p143). Local authorities need to be organised corporately, which will be assisted by vesting clearer responsibilities in the chief executive. The chief executive can also take on a mediator role between chief officers and elected members. The role of chief executives in relation to complaints procedures is explored in Chapter 7, but it should be noted here that their value as arbiters and mediators was highlighted during the course of the Sheffield Study.

#### Local Government and Central Government

In the 1980s, national attention was focused on local government once more, this time in relation to such issues as spending restrictions, rate-capping, abolition of the metropolitan counties and the GLC, and the privatisation of services and, more recently, the poll tax. Much of this is about the relationship, if not struggle, between the central and local state, and it is to this issue which I will now turn.

Jackson (1967) suggests that local government is "an entirely different kind of institution from the national government, where the elected body and the executive are separate" (p17). Local government is nearer to the consumer, and the citizen can influence decision making in a way unlike central government. Councillors perform a different function to MPs, as the committee system allows councillors to become involved in administration in a way totally unlike the relationship of Parliament to the Civil Service. Councillors are an integral part of the "government", unlike the majority of MPs, whose



role is far more one of scrutiny. The different attitudes of professional administrators and amateur elected representatives is more acutely felt in local than in central government, where MPs do not have regular contact with the Civil Service.

It could also be argued that the kinds of services provided by local authorities are very different to those provided by central government. These include, housing, education, environmental health, transport and the personal social services. These services touch the lives of citizens in a more personal and direct way than central government. Indeed, central government in Britain has few service responsibilities outside of social security and defence, with local government being responsible for most welfare services.

A central question to be addressed is whether local government is autonomous. Can it be seen as a discrete area of study, distinct from central government. The Layfield report (1976) put forward two models of local government. The centralist model was a system in which local authorities were virtually the agents of central government, with their primary justification for existing being that they could mitigate the dangers of remoteness and bureaucratic administration resulting from a wholly centralised form of government. The localist model, on the other hand, was a system where real political authority and power are decentralised to local authorities in respect of those functions which could appropriately be performed at the local level. (see Widdicombe 1986, p53).

Although Dearlove (1973) states that the conventional theory views local authorities as the agents of central government, which exercises control by financial means (p14), this view has not been universally accepted. Despite the fact that local authorities may only act within the specific powers set by Parliament, and despite the limitations placed by central government on the amount of discretion which could be exercised, there has always been enormous variation in the level of services. Thus Holman (1970) found "vast differences ... between the same services in different areas" (p164). A similar conclusion was

reached by Boaden and Alford (1969), who found "examples of the variations of service ... over the whole range of local authority activity" (p204). Slack (1960) and Townsend (1962) found differences in the services provided for old people. Erratic provision of day nurseries was found by Packman (1968), Ryan (1964) and the Central Advisory Council for Education (1967). Such differences seem to indicate a lack of central control; nor do they necessarily reflect differences in local need (See Dearlove 1973, p14). Widdicombe (1986), too, speaks of British local government being "diverse" (p29) and that there are a "host of differences in the practices and approach of different councils which derive from different local traditions" (p24).

This, then, is recognition that there is some autonomy. Britain is not a totally central state: there are expenditure targets and set limits for raising taxes, but "British local authorities still retain considerable discretion over the way in which they run their services and the level of service they provide" (Goldsmith 1986, p xiv). Before exploring this proposition, it may be useful at this point to explore some of the theoretical assumptions about research into local government, focussing on what has become known as the "urban" question, or the concept of urban sociology, which has concerned itself with the study of the city.

### The Urban Question

The development of interest in local government can be traced to the late 1960s and early 1970s (see Harloe 1975) and in Britain took the form of studies into state involvement at a local level, especially in the areas of planning and housing. There have been attempts since then to ground urban sociology in some theoretical framework. This section will explore these developments, and attempt to justify the focus of this research, which is local government as a discrete if not autonomous entity,

Before this, during the 1950s, urban sociology was little more than the study of everything that happened in urban areas, including educational deprivation among the working class and social isolation in council tower blocks. In other words, it was no different from the sociological analysis of advanced industrial capitalist societies (see Saunders 1986, p114).

The development of urban sociology in Britain, or more specifically, urban managerialism can be traced to a book published in 1967, which was actually a contribution to the sociology of race relations, but which also developed a new approach to the analysis of the city. The book, Race, Community and Conflict (Rex and Moore 1967) was a study of housing and race relations in the Sparkbrook area of Birmingham. Its importance was the recognition that a city, during its development historically, becomes differentiated into distinct sub-communities which are partially separated. Three groups become segregated during the initial settlement of a city: the upper middle class live in large houses near the cultural and business centre of the city, but away from the factories; the working class live in small rented terraced cottages, where there is a strong sense of collective identity; the lower middle class also rent homes, but they aspire to be like the bourgeois home-owners. As the city increases in size, the population migrates from the centre to the outlying areas, with the result that inner city areas like Sparkbrook, become transformed into twilight areas.

Of crucial importance to their theory is the notion that "suburban housing is a scarce and desired resource" (Rex 1968, p214), which is unequally distributed among the population. The means by which it is allocated to sections of the population is crucial to our understanding of life chances, in the city. Housing allocation presents a situation of potential conflict by the different groups demanding access to the same resource. There are two types of access to housing: in the private sector access is dictated by the credit institutions which lend money according to the size and security of the income of the borrowers; in the public sector access to housing is

determined by local authority policies, based as a rule on residence qualifications, the applicant's need, and the suitability of the particular type of housing for the applicant: the bureaucratic mode of allocation, as opposed to the market mode. The selection by the local authority is identified as one of the determining factors of residential patterns in the city. The approach is Weberian in tone, with the authors looking at typical actors in the social system.

The study was useful because it suggested that the struggle over housing can be analysed in terms of the class struggle over the distribution of life chances in the city, which connects urban sociology with questions of inequality and class conflict. Rex and Moore (1967) also made the connection between spatial organisation and the social organisation of the city. As Haddon (1970) puts it: "The housing market represents, analytically, a point at which the social organisation and the spatial structure of the city intersect" (p118).

It was Pahl (1970) who drew out some of the important themes raised by Rex and Moore, and made the initial formulation of the urban managerialist position (which he later revised). He argues that a person's life chances are affected by indirect as well as direct income. A high income enables people to purchase privileged access to urban resources, but the state is also involved in the process through its role as allocator of public resources. Urban sociology, therefore, must study the distributional patterns of urban resources, looking at both market and bureaucratic processes (Pahl 1970, p53).

In his later work (Pahl 1975), he emphasises the importance of the spatial element. Urban sociology is not concerned with the study of all allocation systems, only the resources that are inherently unequal because of their connection in a spatial context. Thus, he includes housing and transportation as fit subjects for urban sociology, but not family allowances and pension schemes (p10).

Although he recognises that the city cannot be studied independently of wider society ("the city should be seen as an arena, an

understanding of which helps in the understanding of the overall society which creates it" (Pahl 1975, p234-51) he maintains that there are important processes in the city that can be analysed in their own right, one such process being the distribution of scarce urban resources. He maintains that it is inevitable that there will be inequalities in distribution, and that similar constraints will operate "to a greater or lesser degree independently of the economic and political order" (Pahl 1975, p249). That is, there will be problems of distribution of urban resources whatever the type of society, capitalist or socialist.

The urban managerialist thesis is developed on the basis that the allocation of resources is largely a function of the actions of those individuals who occupy strategic positions in the social system. The urban system has various "gatekeepers" whose decisions determine how much access different sections of the population will have to different types of urban resources. Urban sociology's function is to study the goals and values of these gatekeepers to explain the various patterns of distributions. Pahl (1975) says, "... given that certain managers are in a position to determine goals, what are these goals, and on what values are they based" (p208).

The populations which differed in their access to scarce urban resources are, according to Pahl (1975), the "dependent variables", whereas those controlling access, "the managers of the system" are the independent variable" (p201). The task for research, therefore, was to discover the extent to which the different "gatekeepers" had common ideologies and acted consistently with each other. It was also important to recognise the social and spatial constraints upon access to scarce resources in the city.

One problem of Pahl's approach was identifying the urban manager. Should it include only public sector employees, both at central and local levels, or should it also include those in the private sector who also act as controllers of resources sought by the urban population, for example, estate agents and building society managers.

Pahl originally included a wide range of individuals in the private and public sector, including "housing managers, estate agents, local government officers, property developers, representatives of building societies and insurance companies, youth employment officers, social workers, magistrates, councillors ..." (Pahl 1975, p206). However, he later distinguished between public and private sector managers and restricted his definition to the public sector only, distinguishing "private managers" from what he called "managers of the urban system" (Pahl 1977, p54-55) and emphasising the importance of "the role of state bureaucrats and technical experts" as central to an understanding of urban outcomes and regional development (Pahl 1977, p56-57). Although he does not make it entirely clear why public sector employees only are included in his definition, it appears that it is in relation to the role they play in mediating between the central state and the private sector, and between the central state and the local population.

Another problem, apart from the significance of public and private sector gatekeepers is what level of manager within the system should be researched. Should we be looking at the values and goals of those in top positions within the organization, or those lower level employees who work at the interface with the client? There seems to be no criteria for identifying who the urban managers are or for assessing the relative significance of the different types of managers.

Another problem relates to the issue of autonomy. Within the public sector, managers are restrained both by the operation of market forces (eg. land prices, the interest rate) and by higher-level government agencies or policies. Given this, it is difficult to describe urban managers as independent variables. Pahl himself recognised the problem, and in Whose City (1975) he suggested that the thesis gave too much power to the managers, although he argues against the deterministic view which sees them as having no freedom of action at all. His position now seems to be that managers are intervening variables, mediating between the demands of profitability and social

needs and between central government and the local population. Rather than being the independent variables described before, they are significant as allocators of resources, resources which depend on decisions made by central government and the private sector. Williams (1978) points out that "however narrow the limits, managers might well have sufficient choice and discretion to materially affect the outcome of a particular situation", and that "this is something for research to reveal" (p239).

Pahl (1975) maintains that urban managers, because of their key allocation role, are "central to the urban problematic" (p285), and that research should begin with a study of the goals and values of these managers, and their attempt to identify the constraints of their action.

Pahl's work is useful in that it has focussed attention away from the preoccupation with the significance of occupational class and the labour market situation in shaping people's lives, but he has been criticised, notably by Saunders (1986) who says that his approach "gives no indication of where the power of state managers to shape resource distribution ends and the logic of the capitalist market system takes over" (p137). The problem is that everything is found to be contingent, and Pahl fails to theorise how far and in what situations the autonomy of the managers may be exercised.

#### Marxist approaches

During the 1960s Marxist theory was beginning to broaden its scope beyond explanations of the class struggle between bourgeoisie and proletariat, and within this context the urban question was reformulated by Marxists. One approach in this reformulation was the humanist one, which took as its concern the quality of everyday life, and the limitations and potentials for urban life for liberation and self-realization. The other, the deterministic, sees the urban crisis as secondary to the basic class struggle which takes place in the

workplace, and seeks to incorporate urban struggles within the existing workers movement.

One important Marxist theorist is Lefebvre, who maintains that space is political and strategic, and not "a scientific object removed from ideology or politics" (1977, p341). Space is a social product, like any other, and his view is that we do not require a science of space per se but a theory of how space is produced in capitalist societies, and of the contradictions inherent in this process. The basic contradiction in capitalist society is between profit and need; that is the necessity to produce space to make a profit, and the needs of those who have to use it.

For Lefebvre, the study of space is not the study of the city, as we live in an urban society and the separation of city and countryside is of little significance. According to Lefebvre, space "becomes the seat of power" (1976, p83). Through the organisation of space, social relations are reproduced in everyday life, and under the capitalist system the effect of the production of space is to concentrate decision-making at the centre, with the periphery occupied by "subjugated, exploited and dependent spaces, new-colonial spaces". (Lefebvre 1976, p85). This has the effect of destroying social cohesion, as everyday life becomes dispersed at the periphery while decisions are made at the centre.

He sees the trend towards regional devolution as an attempt by the ruling class not to devolve power, but "to offload some of their responsibilities on to local and regional organising while preserving the mechanisms of power intact" (Lefebvre 1970, p87). He sees the urban crisis as a fundamental crisis of advanced capitalism, as the struggle over the use of space is central to the conflict between the requirements of capital and social need.

It might be useful to look at the work of Castells here, both because he criticises Lefebvre, and also because he writes from a structuralist perspective while addressing himself explicitly to the



urban question. During the 1970s Castell's work was important in reshaping urban sociology. He identified "space" as an object of urban sociology which constitutes a legitimate focus for scientific concern (1976, p70). He disagrees with Lefebvre's assumption that space is produced by the conscious activity of human subjects, because it fails to recognise, he maintains, the determinate conditions of social life.

For Castells, spatial units have to coincide with social units, and it is only then that "a sociology could be defined as urban from the point of view of its scientific object" (1976, p57). This coincidence only occurs in what Castells calls "collective consumption units", for example housing and social services. These units of consumption are socially organised and provided with a spatially bound system. The real object of study for urban sociology, therefore, is a spatial unit of collective consumption. Castells argued that the urban system is one aspect of the total system. Its function lies in the process of consumption, that is, the reproduction of labour power (housing, education, etc). Unlike production, these units of consumption are specific to urban spatial units (Castells 1977, p236-237).

Castell's analysis ignores the fact that collective consumption can be organised aspatially, or spatially in an area different to the city. Collective consumption is organised in two ways: firstly there is that provided in kind, for example, housing, education, old people's homes, which has a spatial element. But there is also provision in cash, for example, student grants, housing benefits, child benefit, which has no spatial element.

Castells, like Pahl, believed that the urban question had an essentially spatial component. Thus, for example, Pahl could write:

"I tend to use the word 'city' as shorthand for 'a given context of configuration of reward-distributing systems which have space as a significant component'. Thus housing and transportation are

elements in my view of a city, family allowances and pension schemes are not. An urban resource or facility must have a special spatial component". (1975, p10).

The problem with such a definition is that resources can change from spatial to non-spatial in different countries and at different times, and, as Mingione argues it is "impossible to isolate 'urban' needs from 'non urban' ones. The consumption process itself is not definable in a purely territorial context, it does not correspond to any 'urban question' but is rather an important part of the general social question" (Mingione 1981, p67).

The value of Castell's work is in recognising the issue of consumption as an object for research. Saunders (1986) suggests that it is legitimate to identify consumption as a specific area of study, (p232), but that one cannot conceptualise the city as a unit of consumption, and therefore the spatial orientation of urban studies must be abandoned (p238).

#### Sociological Analysis of Consumption

By the end of the 1970s, researchers in the area of urban sociology turned their attention to issues about consumption, for example, inequalities in the welfare state, analyses of local government services, and conflict between central and local government. Saunders (1986) argues that to focus on the processes of consumption in advanced capitalist societies "provides a distinctive object of analysis for urban studies" (p289). All aspects of consumption are of central importance to our understanding of the present system and the way it is changing, because the capacity to consume is not entirely dependant upon a person's position in the production process. A household's consumption is not just a function of what is earned, but of how much use is made of state provision.

This distinction between the politics of production and the politics of consumption owes much to German "critical theory", notably the work of Habermas and Offe. Habermas (1976) has argued that Marx's political economy is inadequate for understanding late capitalism. This is because science and technology has revolutionised production and thus undermined the labour theory of value, and partly because of the role of the state in managing the economy (see Legitimation Crisis 1976). The state has undermined traditional laissez-faire ideologies and created "rationality problems" with regard to securing and directing economic growth. The failure to resolve these problems threatens the legitimacy of the system (which depends on the ability of the state to deliver on its promises) and the motivation of individuals to participate in the system. Offe (1984) makes a distinction between the State's two roles: the state has traditional "allocative" functions, for example, controlling the money supply or regulating working conditions; and more recently its "productive" functions, where the state directly provides resources, for example by providing welfare support for the labour force.

In the 1970s, the concept which replaced urban managerialism was "the local state". This was first used by Cockburn (1977) in her study of the London Borough of Lambeth. She argued against the idea of local autonomy, saying that the local state, or local government, can only be understood as part of a unified capitalist state, and thus the provision of services at a local level reflect the requirements of capital as a whole. Whereas Pahl had over emphasised local discretion and political autonomy, Cockburn denied them. This can be contrasted with Lojkine's (1977) view, which specifically envisaged the possibility of capture of local authorities by labour representatives. It also fails to explain the increasingly apparent tension between central and local government, which does not readily fit with the view of either partnership or lack of autonomy.

Another approach is that of Jessop (1979, 1982), whose analysis is that the state operates in two different ways. Firstly there are the traditional institutions of representative democracy, for example

elections, lobbying etc, which are used by consumers, welfare clients etc. On the other hand, there is the corporatist sector for example industry, the professions, which operate to develop policies which are consistent with their own interests. Jessop maintains that there is a tension between these two modes of interest mediation: between democratic accountability on the one hand and rational planning on the other. The problem is how to reconcile corporate economic strategies with electoral pressures on social spending.

The local state is regarded as "structurally accessible, the point of daily contact between citizen and state" (Friedland et al 1977, p451). Its very accessibility makes it more susceptible to popular pressure than other levels of the state. One response to this has been to remove key services relating to production to higher levels of the state system, leaving "consumer interests" to be managed at a local level (see Saunders 1986, p301). The state, therefore, operates at two levels: production is organised at a regional or national level, but in the area of consumption, the state operates at the local level, and the ideology is that of citizenship rights and public service.

We seem now to come to the conclusion that the state in the modern period cannot be analysed as a single cohesive entity, and that different bits of the system have different problems, are accountable to different bodies and operate within different frameworks. Local government may thus be a discrete enough area of study. The services it delivers are qualitatively different to those of central government, and it is "an entirely different kind of institution from national government, where elected body and executive are separate" (Jackson 1967, p17). Nevertheless, it is not a single homogeneous entity, and there are structural and operational differences between the various parts of local government. Widdicombe (1986) recognised that "diversity remains in spite of the greater rationalisation achieved by the 1974 and 1975 reorganisation". (p29)

### The Autonomy of Local Government

Much of the continued interest in local government in recent years has focussed on the relationship between it and central government, a relationship marked by conflict which has been "a prominent feature of British politics for most of the last decade" (Goldsmith 1986, p xiii). The "increasingly strained relationship between central and local government" was noted by Harden and Lewis (1982, p66), and Widdicombe (1986) too speaks of the "growing political polarisation of central and local government" (p24).

Some writers have concluded that the logical conclusion to this conflict is "a complete breakdown of central-local relations in the UK" (Meadows and Jackson 1986, p87), and although it is beyond the scope of this thesis to explore the reasons for this in any depth, some discussion of this state of affairs is necessary. It is worth noting that at the time of the research local government officers did feel the tension between themselves and central government. There is no doubt that part of the reasons for this tension is the increasing centralising tendency of the state which appears to be threatening the autonomy of local government (see Harden and Lewis 1982, p66).

Gamble (1989), too, speaks of the increased central power of the state, citing as examples the imposition of the national curriculum and the setting up of new national bodies to replace government bodies, concluding that the government is attempting to "weaken the autonomy and legitimacy of all intermediate institutions, so removing the institutional basis for any opposition to policies determined at the centre" (p17). Loughlin (1986) has noted the increasing use of legislation which imposes rules on local government, which has "generally been accompanied by discretionary powers vested in the Secretary of State" (p200). Widdicombe (1986), too, drew attention to the evidence from the Association of District Councils, and individual conservative authorities, which criticised the greater control from the centre where they perceived it to be excessive (p35), and

questioned whether the cumulative effects of centralism is "eroding local government" (p54).

Part of the reason for this centralism is that the sheer scale of local government determines that it cannot be insulated from the "macro-economic policies of central government" (Widdicombe 1986, p53), and also, because it provides services that are central to peoples lives, it becomes unrealistic to suppose that there can be autonomy in the provision of those services. Citizens want there to be a right to services throughout the country which are "reasonably consistent, although not necessarily uniform" (Widdicombe 1986, p54). Widdicombe does recognise, however, that part of local government's strength is its diversity and that national uniformity would not be desirable (p64).

Not only is local government's relationship with central government changing, but its approach is changing at the local level. In the 1970s Cockburn (1977) identified two trends in local government: corporate management and participation (p2). The development of corporate planning was heralded by Maud (1967), before which local authorities had been traditionally organised into semi-autonomous departments, each dominated by a particular profession (see Cockburn 1977, p17). There can be no doubt of the move towards a corporate management style, a factor recognised by Widdicombe (1986), who admits that local government's internal management has become "more corporate and less based on the old service professions" (p61).

Its role has also changed in relation to the consumers of its services, who have different expectations. This new approach is reflected by the Audit Commission, which, in a Management Paper entitled "The Competitive Council", included a section headed: "People no longer accept that the council knows best", where it was acknowledged that "council's customers are more demanding and less grateful. They are also better informed, and better able to articulate their demands". It goes on to say that the only value of

services "is the extent to which they satisfy popular needs" (Audit Commission 1988, p3).

The disenchantment with the professional bureaucratic approach was recognised by Harden and Lewis (1982), particularly in relation to the way such values have tended to stifle political choice (p70). This point was taken up by Widdicombe (1986), who observed that local communities are "less prepared to accept professional approaches to service delivery, and want instead more participation through consultation (p61). Part of these raised expectations is that grievances will be redressed, and that the consumer will have some opportunity to express dissatisfaction with decisions. The Commission for Local Administration has been available since 1974 to redress grievances and to supplement the role of councilors, but increasingly more formal mechanisms are being used for this purpose.

However, despite the corporate management approach, and the increased demand for consultation and participation from consumers, the role of the professions within authorities is still important, and it also raises important questions about autonomy. It has been argued that the autonomy of local authorities may be being eroded by professionals, who because of their shared ideology, expertise and career structure, form "policy communities which span the boundaries of government institutions" (see Rhodes 1986, p18).

Dunleavy (1984) also argues that the initiation of policy in local government is heavily influenced "by professionally promoted 'fashions' which are nationally produced" (p77), and he suggests that these professionalised policy systems can be seen as a decision-making strategy. Professionals within local government may form part of the national professional community which pursues its own professional interests, and is influenced by professional bodies, rather than any ethos within individual authorities.

Laffin (1986) argues that professional groupings in government cut across central-local relationships because the professions, whether in

local government or not, form a professional community with shared values and understandings and a high degree of value consensus (p109). Such professionalism can lead to the erosion of local autonomy. The West Midland Study Group (1986) found that there was a developed professionalism among officers, which was divorced from the old idea of local government service. There were strong links with central government departments and with other officers in similar departments of different local authorities, rather than with members and officers within their own authority but within different departments (p244).

We now seem to have come full circle, and are back with the autonomy of urban managers. So, what conclusions can be drawn from this? All the various approaches to the urban question examined in this chapter have some value in explaining the processes at work in a study of local government. None offer a total explanation, nor a simple model for conducting research, but what they amount to is the fact that local government does have a degree of autonomy. Although central and local government have a symbiotic relationship, at the time of the research there was some autonomy in what was administered, even if financial and other constraints tended to circumscribe the arena for choice.

In addition, these approaches indicate that for research purposes, the relationship between consumers and the local state is a discrete enough area of study. Administrative organisations have considerable involvement in the urban process, and their actions are not predictable in that they respond to a variety of interests and constraints. Therefore the analysis of administrative actions is important, and the influences and constraints on these organisations "can only be seen by examination of the administrative operation in practice" (Batley 1980, p26).

However, in seeking to explain the administrative organisation in practice "we have to proceed beyond that structure and those within it" (Williams 1978, p239). The role of professionals within local government cannot therefore be ignored, and the study of urban



managers is an important area for research. Bureaucrats do not operate in a political vacuum but they are not totally insignificant in determining what the state does and how it does it. To an extent, the way they operate will depend upon their own values and interests. In order, therefore, to understand the role of the urban manager, it is necessary to look at how they are located within the organisation. Some discussion of the managerial enterprise is therefore needed, and this will be the subject of the next chapter.

### CHAPTER 3 GRIEVANCE REDRESS AND THE MANAGERIAL ENTERPRISE

#### Introduction

At the end of the last chapter it was concluded that local government constitutes a discrete area which is worthy of study. The Sheffield Study, on which this thesis is based, was conducted by means of questionnaires sent to local authorities to be completed by senior council officers, supplemented by interviews of senior officers and councillors. The position taken in that study and this thesis is that the individual actors' views and interpretations are important. There was therefore an emphasis on what may be called the official view of the situation. Officers are the ones who will interpret and implement procedures, and it was therefore considered that the officers' perceptions of the situation were of prime importance. If the perceptions of members, as policy makers, are also taken into account, this may give an accurate picture of the local authority viewpoint.

Consumer opinion was also sought, in the Sheffield Study, to test whether the organisational view was mirrored by its customers, and to this end some limited studies were carried out of consumers' experiences, both of local authority procedures and the local ombudsman system. Although these consumer studies were limited they nevertheless provided some valuable information of consumer behaviour, and there is no reason to suppose that more detailed work among consumers would have led to different overall conclusions. In fact, although these studies were limited, the information obtained positively reinforced the data collected from the official perspective. A more systematic consumer view was also obtained by reading complaints files kept by local authorities and the Local Ombudsman. These too reinforced the official data.

While accepting that the views of the individual actors, the "urban managers" are important in any study of local government (see Pahl 1970), it is important to recognise that they do not operate as

isolated individuals: they are located within organisations, and the decisions they make, and the way their decisions are translated into action take place within an organisational framework. I would agree with Rex (1973), that the principal focus of urban sociology should be "the study of factors affecting the decisions of decision-makers" (p66), and therefore some understanding of the organisational framework becomes important. This is the approach adopted by much British research in the 1970s, which "began to question how the implementation of planning and housing policy was influenced by organisational requirements and by the personal and professional values of officials" (Batley 1980, p19). Indeed later writing in the area of urban managerialism has begun to emphasise the organisational constraints involved (see Williams 1978, for a review), and Williams (1982) himself argues for a "political economy of organisations" (p104).

Batley (1980) has argued for the importance of organisational analysis to be recognised when studying urban managers: "The limits on policy initiatives can ... only be observed by examination of organisations in practice - that is, as their structures (and the constraints they contain) are operationalised through administrative action" (p18). The study of organisations is important because "without organisations, the response of the 'authorities' to demands emerges from a vacuum: with organisations, responses are seen to be not those of simple interest but the product of processes which are structured to include some interests and to exclude others" (p26).

When looking at decision-making in local authorities it should be remembered that there has been a move towards a management style approach in local government, which was discussed in the previous chapter. Value for money is becoming increasingly important. This is emphasised by the fact that the Audit Commission's remit goes beyond issues of financial probity and is concerned with undertaking value for money audits. Indeed, there is an explicit statutory duty to have regard to value for money in relation to all their functions (DoE 1985, para 8). Any study of local government decision-making must

take this emphasis on efficiency into account, and try to establish how complaints procedures in particular would fit within this framework.

Local authorities are complex entities, and organisational theory may help us to understand how local government works, and the actors' roles within it. It may also be useful insofar as it may help to identify problems that may be associated with introducing or using complaints procedures within organisations. Leak (1986) has pointed out that appeal procedures by themselves do not necessarily import a culture of justice into the organisation. Other methods, for example codes of practice and retraining programmes, may be required to facilitate implementation. The purpose of this chapter, therefore, is to examine the use that can be made of organisational theory to explain the conduct of urban managers, and how systems for grievance redress might fit into the managerial enterprise.

#### What is an organisation ?

Before looking at organisational theory, it may be useful to explain briefly what is meant by an organisation, and how local government fits in with the definition. Hall (1977) speaks of organisations as a vital and central component of the social order (p17). March and Simon (1958) stress the importance of the study of organisations to social scientists, because they are interested "in explaining social behaviour" (p2), organisations forming part of the environment which influences human behaviour. So what is an organisation, and how is it distinguished from other social formations?

The textbooks on organisational theory usually contain a definition, or a number of definitions, of organisations. Weber (1947) for example, says an organisation is a "system of continuous purposive activity of a specified kind" (p151), adding that organisations transcend the lives of their members and have goals. Etzioni (1964) emphasises the importance of goals when he speaks of organisations as "social units (or human groupings) deliberately constructed and

reconstructed to seek specific goals" (p3). Scott (1964) emphasises the importance of "specific objectives" for organisations, although he points out that they have "distinctive features other than goal specificity and continuity", including, for example, "relatively fixed boundaries, a normative order, authority ranks, a communication system and an incentive system" (p488).

Hall's (1977) definition includes "a relatively identifiable boundary, a normative order, ranks of authority, communications systems, and membership-co-ordinating systems" (p23). The organisation itself is relatively continuous, and "engages in activities that are usually related to a goal or set of goals" (p23). Silverman's (1970) definition describes a conventional ideal type of formal organisation; that is, it arises at an ascertainable point in time, is consciously established to serve certain purposes, and is characterised by a "patterning of relationships which is more or less taken-for-granted by participants who seek to co-ordinate and control" (p14).

How do these definitions help to define the organisation or organisations which is/are the subject of this study? Do we define local government as one organisation, or is each local authority to be defined as a separate organisation? Within local authorities, it may be that different departments can be viewed as individual organisations. It may be that particular local authorities have a definite corporate image, but might the fact that the actor is an official in the housing department be more relevant than the fact that s/he is an employee of a particular local authority?

Dunleavy (1981) has argued that there is a common shared ideology among many professionals, especially in the local government system, and that the networks making up this system are able to impose standards of efficiency based on technical/rational approaches to policy which are intended to be applied regardless of local circumstances or demands. Such professionalism, as well as leading to the erosion of local autonomy raises questions about the goals of the organisation. One study found that there was a developed

professionalism among officers, divorced from the old idea of local government service, and having strong links with central government departments and with other officers in similar departments of different local authorities, rather than with members and officers within their own authority but within different departments (Dunleavy 1981, p244).

These issues about professionalism are raised here to illustrate that local government may consist of a number of separate, clearly defined organisations. Each local authority may have its own corporate identity and geographical location, but within it there may be competing and conflicting goals. For example an officer in an environmental health department in one authority may have more in common with environmental health officers in other authorities, than with an officer in the planning department of his/her own local authority. If we want to define the organisations in this study, it may therefore be more useful to speak of the operating norms of planning departments, rather than of a particular local authority, for some purposes.

Having accepted this, there is still the question of who is to be included as part of these organisations. Few would argue that the employees of the organisation should be included, from chief officers to "street-level bureaucrats". But should elected members be included too? Heclo and Wildavsky (1974) speak of political administrators which crosses the officer/member divide, which may be a more appropriate way of studying the actors in local government. What is more problematic is whether the consumer, the "lower level participants" (see Mechanic 1962) also come within the definition. While it seems appropriate to identify elected members as part of the organisation, it would appear that neither officers nor members would include consumers within the definition. This would seem to accord with how consumers themselves see the situation, and indeed, traditional management theory does not include consumers.

### What is Organisational Theory ?

Although recognising that organisational theory is important, it would be indulgent in a study of this kind to give a detailed analysis of management and organisational theory. Only a brief sketch is therefore presented here. Writers on organisations have adopted various approaches to their study, although most of the work on organisations is functionalist (see Burrell and Morgan 1979), with its concern for providing explanations of social order, consensus, and social integration.

A number of writers have attempted to unravel the complexities of the subject by classifying organisations according to type. For example, Etzioni (1961) identifies three types of organisation, based on their power structure: coercive, normative, and remunerative. Blau and Scott (1963) speak of goals, classifying organisations according to who benefits from the organisation. Parsons (1960) classifies organisations according to their overall purpose in society as a whole, identifying four such functions which they could fulfil: production, political, integrative, and pattern maintenance.

Weber (1947), who carried out some of the earliest work on organisational structure, was interested in the different types of authority which exist in industrial society. He classified organisations according to authority, identifying three types. Traditional authority is found in organisations where a command might be obeyed out of reverence for old-established patterns of order. Charismatic authority is based on a devotion to a particular person, obedience being justified because the person giving the order has some sacred or outstanding characteristic. Legal-rational authority is based on the view that a particular official who gives an order, is acting in accordance with particular rules and regulations, and has a right to instruct those lower down in the hierarchy, and he believed that modern industrial society was moving towards a situation in which rational legal authority would be the dominant form.

Burrell and Morgan (1979) are more concerned to classify theories of organisations, rather than classify organisations themselves. Their approach to the study of organisations is different to most authors, in that they put forward the proposition that social theory can be conceived in terms of four key paradigms, based upon different sets of metatheoretical assumptions about the nature of social science and the nature of society. This has relevance for the study of organisations as "each paradigm generates theories and perspectives which are in fundamental opposition to those generated in other paradigms" (p vii).

There are even those (Clegg and Dunkerley 1977) who question whether it can be called organisational "theory", and who would rather speak about "a body of knowledge that, for pragmatic reasons, has developed both unevenly and atheoretically" (p1). The reason for this is that the study of organisations has developed in a number of specific ways to settle different ends, ranging from improving organisational effectiveness to providing theoretical direction for those claiming a purely academic interest.

### Studies of Organisations

Most approaches to the study of organisations fall into two broad camps. Firstly orthodox approaches, which are management orientated, include the work of Taylor (1911, 1947), the Human Relations School (Mayo 1933, Roethlisberger and Dickson 1939), and the socio-technical systems approach (Trist and Bamforth 1951, Woodward 1958). The work of Taylor (1911, 1947) forms the basis of the classical approach to organisational theory. His scientific management approach combined a study of the physical capabilities of workers, with his own theory of motivation, and he sought to convert the process of management to "a true science, resting upon clearly defined laws, rules and principles, as a foundation" (1947, p7). This approach has been criticised because the employee is viewed as an inert instrument performing an allotted task. It ignored factors concerned with individual behaviour and motivation, and concentrated on the formal aspects of the organisation at the expense of informal groupings, with the individual



in a passive role, whose behaviour was determined by the work environment.

In contrast to scientific management, the Human Relations School saw motivation as more complicated and emphasised the importance of the formal work group, which resulted in a rejection of Taylor's "economic man" approach (see Mayo 1933; Roethlisberger and Dickson 1939). It was found that non-economic rewards play a central role in determining motivation, and therefore the workplace has to be regarded as a social system, with informal organisations which could work either for or against the formal system. The Human Relations approach in turn has been criticised, for ignoring the role of conflict in the work place, and concentrating purely on the social aspects of the work environment.

The socio-technical systems approach was an attempt to combine social factors with other external factors, namely technology. This approach derived from a study by Trist and Bamforth (1951), which focused on the importance of group relationships, with the work situation viewed in terms of the interrelations between social and technological factors. It was developed by Woodward (1958) who set out to discover whether the principles of organisation laid down by classical management theorists correlated with business success when put into practice. The results of the study showed an empirical relationship between technology and patterns of organisation and business success. This approach has given rise to research based on the objectivist assumption that organisations are hard, concrete, empirical phenomena, which can be measured, research which has "over the last ten years ... consumed the intellectual energy of an increasing proportion of organisation theorists " (Burrell and Morgan 1979, p163).

The approaches discussed so far can probably be termed "orthodox approaches" in the sense that they are oriented towards managerial problems of the organisation and managerial concerns for practical outcomes. They are also the approaches that have "fixed their interests on the structural aspects of the organisation" (Etzioni

1964, p4). This is the dominant approach, and its dominance has led Clegg and Dunkerley (1977) to conclude that the "interests of management and the interests of organisation theory have all too often been in harmony" (p2).

The alternative, radical, approach is based on a sociological approach to organisations, and it owes much to the work of Weber (1947), who discusses organisations in the context of his work on bureaucracies. For Weber, bureaucracy was the expression of rational and efficient administration, and he emphasised the technical competence and monopoly knowledge of bureaucrats:

"bureaucratic administration means fundamentally the exercise of control on the basis of knowledge" (1947, p311).

In this "ideal type" of bureaucracy, there is a high degree of specialisation of function, and authority derives from skill and expertise. The initial selection and subsequent promotion of personnel is dependant upon technical qualifications and experience, and there is a pyramid shaped hierarchy and a formal set of rules governing procedures. The various jobs and duties are allocated to various positions or roles, duties which are not given directly to an individual to perform, but the job that the individual is doing. As a result, if an individual leaves, the continuity of duties is assured (p329-330). His theory of bureaucracy emphasises the positive attainment and functions of the organisation.

Valuable though Weber's work on bureaucracies was, it did concentrate on the formal organisation, and on the official stance an organisation might take. It is now broadly accepted that non-rational or dysfunctional conduct does occur within organisations. At a theoretical level this was explored by Selznick (1948) who recognised that organisations, although formally rational, are influenced in practice by the informal and social aspects of the organisation, and that they "never succeed in conquering the non-rational dimension of organisational behaviour" (p25). He focused on the dysfunctional

consequences of bureaucracy, maintaining that sub-units within the organisation set up goals of their own, which may conflict with the purposes of the organisation as a whole.

Gouldner (1954), too, addresses certain "obscurities" and "tensions" in Weber's theory (pp19-20) particularly the notion that the effectiveness of bureaucratic functioning depends upon the organisational members accepting the legitimacy of rules or legal norms. The manner in which the rules are initiated may have influence upon the dynamics and effectiveness of the bureaucratic operations. When looking at the rules of the organisation it is important to know for whose benefit the rules are made, as this can affect the outcome.

Blau (1955) was interested in the influence of the informal organisation on the formal structure. In a constantly changing environment, the organisation has to rely on unofficial practices and communication channels if it is to remain effective, because official modifications of the rules and procedures takes too long. Bureaucracies are not, therefore, the static structures of Weber's ideal type, but the scenes of an ongoing process of interpersonal relationships which generate new elements of organisation, as individual employees modify the rules unofficially in advance of the organisation doing so officially. Indeed it is not only a question of modification of the rules, but the fact that there may be multi-layered and heterogeneous goals within an organisation.

At an empirical level, within local government these kinds of patterns emerge, and aspects of non-rational conduct become evident. Leak (1986), in his detailed study of the operation of an appeal procedure illustrates the way that sub-goals can defeat the objectives which the organisation is trying to achieve. This became apparent when undertaking the empirical research for the Sheffield Study. It has to be admitted that whatever is achieved in terms of the introduction of complaints procedures must take account of the fact that it has to be operated and implemented by individual actors within the system. Leak's (1986) work testifies to the fact that if there is an attempt

to introduce a complaints procedure where there was none before, the old routines of the office are not going to change, and it will not necessarily lead to a culture of justice, producing a distinctive shift in attitudes or values. Even where there are visible structures for such appeal mechanisms, they are not as dominant as the enterprise's own operating norms and assumptions, and officers are not generally appointed whose task it is to look after the consumer interest.

This tendency has been observed by Etzioni (1964), who recognised that "many lower-level clerks and sales workers who come into contact with consumers are organization-oriented and not consumer-oriented" (p99). He concluded that to be client oriented "is a relatively unrewarding experience in many organisations" (p100). Blau and Scott (1963) observed the same phenomenon among social workers, who were more oriented to their social work team, and seemed to treat their relief clients in a more impersonal manner (p108). Training of staff thus becomes a very important aspect of the process.

This tendency has been recognised by those who have moved away from the structuralist approach of Weber and turned their attention to decision-making and the human element in organisation. Simon (1957), for example, introduced the model of "administrative man", as opposed to the economic man characteristic of classical theory, and he used the notion of "bounded rationality", as opposed to optimum decision-making, saying that the central concern of administrative theory is "with the boundary between the rational and non-rational aspects of human social behaviour" (p xxiv). Solutions to problems are adopted which "satisfice" rather than "maximise".

March and Simon (1958) also use this model, recognising that the members of the organisation are the decision makers and problem solvers, whose perceptions and thought processes are central to explanations of behaviour in organisations. In practice, a satisfying solution is sought rather than an optimum rational one, and the human element of the process is emphasised. This model was further

developed by Cyert and March (1963) who saw the organisation as an "adaptively rational" system, coping with a variety of internal and external constraints in arriving at decisions. The organisation is seen as an information-processing and decision-making system which has to cope with various conflicts from both within and outside its boundaries.

Silverman (1970) also emphasised the importance of the person as the social actor at the centre of the stage. Social life is an ongoing process, and social action is seen as deriving from the meaning which is attributed to the social world by individual actors. He suggests that the systems approach to organisations has "severe logical difficulties" especially in the assumption that organisations as systems have needs or are self-regulating. The systems view of organisations does not take into account, or provide explanations in terms of, the actions of the individual human beings who are its constituent members. For Silverman, a person is the social actor at the centre of the stage, and thus he says that "while society defines man, man in turn defines society", and "men also modify, change and transform social meanings" (1970, p126).

So, having started with the individual "worker" in classical theory, and the emphasis on the individual as a cog-in-a-machine, we have now come around to the individual again, but this time, seeing individuals as essential actors, in the sense that their definition of the situation is important. Although the objective structuring of the organisation is important, the actions of the individuals within the organisations must be important because it is their actions which are the actions of the organisations, and are a result of their definition of the situation. The emphasis has thus moved towards the individuals who comprise the organisation.

This in turn presents its own problems. There may be different definitions of the situation, and the actors may have different goals. How does an organisation resolve potential and actual conflicts of aims and interests? These particular concerns have been marked by

what have become known as "implementation studies" in organisational analysis, the main concern being that of an implementation deficit, a gap between policy as created at the top and the different version of this which is applied in practice. Before discussing the problem of implementation, it should be pointed out that the role of discretion cannot be ignored in this process, because, as Young (1981) argues, it allows the policy system to take account of the values, perceptions and motivations of the "peripheral actor" in the system (p32). A brief look at the problem of discretion will therefore be necessary.

### Discretion

The role of complaints procedures as a method of controlling the arbitrary exercise of discretion has already been discussed in Chapter 1. Without wishing to repeat that discussion, it has to be said that discretion is inevitable because of the complexity of a social world that cannot be planned for, and that it is recognised that all organisations produce discretion, even if this is sometimes at the margins. The rules versus discretion debate is not new. Indeed Bendix (1949) summarised the problem by saying:

"Too great a compliance with statutory rules is popularly denounced as bureaucratic. Too great a reliance on initiative in order to realise the spirit, if not the letter, of the law is popularly denounced as an abuse of power, as interfering with legislative prerogative" (p12).

Few would argue these days that rules can only ever be an incomplete guide to action, and Hill (1972) recognises that there are several limits to the extent to which discretion can be eliminated by rule formulation (p85), but he also points out that many civil servants have scanty training for exercising discretionary tasks" (p84).

This is not without problems as these actors may make choices "incongruent with those of formal policy-makers" (Young 1981, p34). Lipskey (1980) also speaks about the street-level bureaucrats, those

"public service workers who interact directly with citizens in the course of their jobs" having substantial discretion in the execution of their work (p3). This is notoriously the case in social services departments, as shall be seen from the empirical work in this study, but even in housing departments, the empirical work points to a great deal of discretion within the system. Policy is rarely applied directly to the external world, but is ""mediated through other institutions or actors" (Young 1981, p35), and the impact of the policy is affected as much by these key actors, as by the merits of the policy itself.

Given the inevitability of discretionary decision-making, there is a need for checks on this use of power, so that individuals who are subjected to these decisions are safeguarded. For consumers, appeals and complaints mechanisms can secure that there is the maximum scrutiny of decisions. But, when looking at the problem of implementation, even though central policy makers may attach great significance for rules and guidelines, the peripheral agents "place their own construction upon central advice or directives" (Young 1981, p35) and thus policies may be assimilated, ignored, or inverted. Young believes that it is important to study the actors at the edges of policy implementation, as the outcome of the policy system is determined not only by the amount of control exercised over these implementers, but also by the extent to which these actors share the policy makers definition of the situation, that is, the extent to which they inhabit a common assumptive world. This then leads us back to a discussion of the problem of implementation.

### Implementation

The conventional approach to implementation distinguishes "policy" from "implementation" as quite distinct processes, policy being the decision, and implementation being the practice of it. The problem of implementation deficit can be seen to be a result of organisational complexity, with organisations distorting and misinterpreting policy. Dunsire (1978) suggests that sections within a bureaucracy will adapt

policy to suit its own interests, and he focuses on ways in which the objectives and interests of particular sections can be incorporated, to make the policy acceptable within the bureaucracy. However, this conventional "top down" approach to the conceptualisation of the implementation process has come under attack in recent years (see Barrett and Hill 1986). It is now recognised that policy does not necessarily originate from the "top", but can be a response to pressures or problems on the ground. Not all action relates to specific policy and where policy stops and implementation starts may be extremely difficult to determine.

The problem of implementation is as much a problem for local government, as it is for any organisation. The managerial problem is complicated because of the democratic nature of local government, and the situation is different to that of central government because of the constitutional position of the elected member. The difference between councillors and MPs is well recognised, in that councillors are not just constituency representatives, but they are simultaneously a representative of the local community, and also responsible in law for the delivery of services (See Widdicombe 1986, p103).

Within local government the problem is complicated by the fact that elected members decide policy, but managers decide on the implementation of that policy. These managers, unlike councillors, have little formal legal responsibility for delivering services, but in practice are responsible for day-to-day management. However, Cockburn (1977) noted the tendency of the corporate management approach in local government to "exclude the ordinary elected councillor from effective decision making" (p39) and she pointed to a blurring of the distinction between senior officers and members, maintaining that "it is far from evident that all elected members are politically distinct from senior officers in the bureaucracy" (p168). This blurring of roles was also noted by Maud (1967), who was concerned about the undue involvement of councillors in detailed day-to-day administration, so that they were unable to devote time to issues of policy. Maud (1967) also rejected the distinction between



policy and administration in the functions of officers and members, recognising that officers are involved in policy interpretation and formulation, whilst elected members will not be satisfied with leaving the implementation of policy wholly in the hands of the officers.

More recently (see Widdicombe 1986) the role of the professional chief officer is increasingly being questioned by councillors, who are often reluctant to accept the professional approach to service delivery, and appear to want to intervene more in the day-to-day management of the authority. Councillors often see the style of implementation of policy as part of the policy itself rather than as a separate process (Widdicombe 1986, p104). Thus, at a senior level their boundaries become blurred, and Widdicombe (1986) concludes that the "current local government model .... is not one which lends itself to total clarity in roles and relationships" (p103). The old assumptions that detailed decisions and actions should be left to officers, is being challenged, and members are recognising that shortcomings in the detailed implementation of policy can often affect its credibility and success (Widdicombe 1986, Research Vol 1 p124).

However, despite the increased desire of some members to intervene, the overwhelming number of decisions are taken by officers. Widdicombe (1986) speaks of the "complementary relationship" between councillors, who are part-time and drawn from representatives of the general public, and full-time officers with professional expertise, although it is admitted that "there has sometimes been too great a stress on officer professionalism" (p66). Although councillors have the right to ensure that their decisions are implemented by officers, a merging of the two roles is not seen as desirable, and "councillors should leave the day to day implementation of council policies .... as far as possible to officers", and officers should "demonstrate that they are sensitive to the political aspirations underlying those policies" (p66). In one area of decision-making in particular, that of appointments below senior officer level, Widdicombe (1986) recommends that councillors should not be routinely involved as "line management responsibilities can be disrupted if appointments of junior

staff are made by councillors rather than senior officers" (p168). The reality of the organisational structure will necessarily mean that in day-to-day matters, the councillor's role is limited.

All this adds weight to Young's (1981) argument that it is important to study the actors at the edges of policy implementation, as the outcome of the policy system is determined not only by the amount of control exercised over these implementers, but also by the extent to which these actors share the policy makers' definition of the situation, that is, the extent to which they inhabit a common assumptive world. The aims and objectives of the organisation are thus mediated through individuals.

This could make the introduction of complaints procedures problematic. Until recently, these sorts of systems have not flourished in this country, and there has traditionally been no culture of justice in administration. This can be compared, for example, to the USA where organisational culture is more in tune with the idea that consumer complaints should be taken seriously, and can be used in the policy making process.

Abrahamsson (1977) has noted the tendency for organisations to concentrate on activities which have easily and directly measurable results, which means that there is a risk that concrete goals will be concentrated upon, at the expense of goals which are more abstract (p143). This is especially true for public service organisations which increasingly emphasise economic efficiency criteria rather than a more general measure for goal achievement.

As well as the emphasis on economic efficiency, which may work to squeeze out justice, the role of professionalism in public organisations may also militate against it. Although Widdicombe (1986) believes that local government's internal management has become more corporate and less based on the old service professions (p61), Hill (1972) notes the attempt by professionals within public administration to preserve their integrity from the power of the

organisation (p83). Etzioni (1964) noted that there was an ideology in public organisations that those who administer the service are in a better position to judge what is good for the consumer than consumers themselves (p97). Thus the administrator or expert takes control because of "his superior knowledge", and this results in the consumers' freedom of choice being restricted in the name of other values such as health, education, or increased possibilities of choice in the future (pp97-98).

Thus, as we shall see, commitment to justice seems to weigh less heavily on the minds of managers than the policy initiatives may have us believe. This has been observed at a theoretical level by Habermas, for example, who was concerned about the progressive rationalisation of public decisions, with the growing contradiction between administrative efficiency and representative administration, so that technical factors seemed to be more important than values. There is thus the danger that technical control and efficiency may become the only way of examining goals, and that ultimately there could be a system where decision-making could be delegated to computers and removed from the control of the people (see Habermas 1971, 1976). Peters (1978) takes up this theme by asking whether we have come to the point where "a new elite structure based on information, technical expertise, position and policy ideas has come to determine who gets what, when, and why?" (p173).

So, how can this danger be averted? How can "values" be reclaimed, as opposed to purely technical decision-making? One method would be to utilise legal training. Thus Lewis (1981) argues that the wider employment of legal skills in modern government would "contribute to our democratic ideals and to the optimisation of resource allocation" (p105).

In Britain, few senior officials in local government have legal training. Indeed there are few lawyers in any high administrative posts in Britain, which is in marked contrast to the other countries in the European Community, the USA and Australia (Whitmore 1970,

p483). This can affect the way complaints are seen and dealt with. Apart from specialist legal sections, the only policy making areas headed by lawyers have been chief executive departments, but as we shall see, few complaints ever get this far. If there is an attempt to introduce a procedure where there was none before, the old routines of the office are not going to change. Officers have the ability of redefining a problem, so that a consumer may come with a complaint, and leave the office feeling that it was not a complaint at all. Training, as well as policy initiatives, is needed, otherwise the implementation gap widens.

Leak's (1986) detailed study indicates that even where visible structures do exist for complaints or appeals procedures, they are not as dominant as other operational norms. Officers are generally not appointed whose task it is to look at consumer complaints, and in organisational theory consumers are not even seen as part of the structure. Fairness and justice should be part of the training process of managers in local government, so that these ideals do not become submerged by the organisational structure itself.

Even where authorities have complaints officers, indicating an institutional commitment to a culture of justice, they often have a low profile, and complaints are submerged. Whitmore (1970) believes that having lawyers in administration is the "best guarantee of fairness", and points out that many administrative decisions are more important socially, and often monetarily, than the decisions of the lower courts (p492). The use of lawyers may go some way to ensuring that when procedures do exist they are utilised, and do not fall into disuse.

This chapter began by asserting, once more, that the study of local government was valid, and that in order to conduct such a study the views of the actors in local government would be sought. It is however important to recognise that these actors do not act in isolation, but that they operate within an organisational environment. In order to understand this process, a brief overview of

organisational theory was presented, which brought us back to the importance of the individual actor, and which in turn highlighted the problem of implementation.

This is a problem insofar as, even if organisations have complaints procedures, it does not mean that they will necessarily work; the administrative culture may suppress complaints; and there may, or may not, be resistance by members of the organisation to operate the procedures. Implementation thus becomes important, which means that there must be a commitment throughout the organisation to the creation of a positive culture of rights, and in this respect the quality and training of officers becomes important.

Complaints procedures are but one aspect of redress for aggrieved citizens. Other avenues of redress are the courts, elected members and the Local Ombudsman. These will be discussed in the next part of the thesis.

## PART II ALTERNATIVE/ADDITIONAL METHODS OF DISPUTE SETTLEMENT

### CHAPTER 4 ELECTED MEMBERS

#### Introduction

We saw in the last chapter that a strong managerialist element is developing in local government, and that this has implications for the role of the elected member, whose traditional role is that of decision-maker. In this chapter I want to explore the role of the elected member in dispute resolution.

Elected member, in this context, can be used to include Members of Parliament as well as councillors, as both are approached by constituents for help in settling grievances relating to local government, and in some cases holding surgeries to seek out problems. In the quantitative part of the Sheffield Study there was no examination in any detail of the role of the MP, although references were often made by officers, in the fieldwork, to the fact that complaints taken up by MPs, along with member complaints, were treated with great care. However, the survey of consumers in a London Borough in the Sheffield Study indicated that few (2%) had approached an MP with their complaint at first instance, which is not out of line with Leak's study (1986), which found very little MP involvement in housing cases, with MP inquiries making up only about 1% of the total (p270). However, 40% of those surveyed in the Sheffield Study consumer survey, said they would go to their MP if they had a complaint, and the local authority did not resolve it satisfactorily. The Sheffield Study fieldwork also indicated a much greater involvement of the MP, with officers' attesting to the fact that MP involvement often brought a swift response. Hill (1976) also noted that when complaints are referred to local offices by MPs the cases will be "investigated at managerial level in order to provide a speedy reply" (p153).

Others have recognised that MPs will pursue problems brought to them by their constituents, which are not the responsibility of central government (see Beith 1976). Hill (1976) noted that problems take up a considerable amount of the members time, and that while the "electoral pay-off ... is often doubtful", most MPs "express a sense of obligation to try to redress grievances" (p152). Other research has shown that MP's constituency workloads involve a good deal of local authority problems, especially housing (see Cohen 1973; Gould 1978; Norton 1982). This may be because the MP is seen to carry more weight and be unbiased, but, as Hampton (1970) observed in his study of Sheffield, this places MPs in an ambiguous position. If they are too attentive to local issues, they are seen as interfering with local government; if they concentrate on national or international issues they are accused of neglecting their constituencies. There can be no doubt that MPs do have a role to play in dispute settlement, but it can be in an ad hoc and unsystematic way. However, if complainants do manage to persuade an MP of the worthiness of their cause, the authority will respond.

In some recent research on MPs and complaints (Rawlings 1990), it was seen that a large proportion of complaints dealt with by MPs concerned local authority matters, mainly in the field of public housing, but also including social services, planning permission, education and public transport (p31). This study confirmed some of the findings of the Sheffield Study that MPs were not just postboxes, but can play a very active role in dispute resolution (p37), their role being particularly valuable in "non-routine cases with no obvious haven" (p40).

### Councillors

Although councillors have a grievance resolution function in common with MPs, constitutionally their role is different. Unlike MPs they have executive authority, and they have a much closer relationship with the services for which they are responsible. As Hill (1976) expresses it:

"in local government there is not the clear-cut division which exists in Parliament between members of the Government and the rest of the MPs" (p154).

And, although chairs of committees become closely involved with chief officers in decision-making, they are not "ministers", and are obliged to bring important matters to the full committee. As they are not just constituency representatives, they may be asked to complain about a decision, in which they played an active role. Despite the fact that this can make their position more ambiguous than that of an MP, there is no doubt that the councillor has traditionally played a major role in dealing with complaints from constituents, and nothing in this research casts any doubt on the fact that this role will continue.

Before examining the role of councillors in complaint resolution, it may be useful to discuss briefly their constitutional position. In fact, there is little in statute or common law regarding the position of individual members of local authorities (see Cross and Bailey 1986, p54). It is the corporation, rather than the individuals who comprise it, which has legal significance, so that a member in an individual capacity has no executive powers and can exercise no lawful authority. There are a number of conventions and commonly accepted practices which govern the rights and powers of members in their individual capacities, and in this respect the standing orders of individual local authorities are important. Members' principal legal rights relate to the inspection of documents and the payment of allowances. Their principal legal duty is an obligation to disclose any pecuniary interest they may have in a matter before the council, a duty recently strengthened by the Local Government and Housing Act 1989.

The Local Government Act 1972 gave a general power to local authorities to discharge any of their functions through officers (see generally Cross and Bailey 1986, p73). Previous statutes enabled certain officers to take decisions on behalf of a local authority, and before the 1972 Act it was a widely accepted practice that whatever action an officer took which was within the scope, general authority



or of a policy settled by the council would be taken as the act of the council itself. Now, the practice is for authorities to specify the areas of decision making which fall to specified officers. Under section 100G(2)(4) of the Local Government Act 1972, councils are obliged to maintain a list, open to public inspection, of the powers delegated to officers.

These wide powers of delegation mean that "councillor involvement in the minutiae of decision making on individual cases is declining" but "it is by no means dead" (Hill 1976, p154). Despite the fact that there is evidence that the corporate approach has reduced the effective role of many councillors (see Cockburn 1977; McAuslan 1980), and that the decision making function is mechanistic "depoliticised policy-making" (see Birkinshaw 1986, p55) there is still evidence of councillor involvement in routine decision-making. For example, Hill (1976) found in some housing authorities that allocation of council houses by the housing committee still occurs (p154). In one recent Local Ombudsman report (88/A/2329), an authority was criticised for having too much councillor involvement in allocations, the ombudsman saying that in the long term he could see "no role for such detailed member involvement in normal housing allocations". There were no written rules for the housing allocation sub-committee, a clear breach of section 106 of the Housing Act 1985, which requires councils to publish their allocation rules, and one councillor admitted that he was not too happy with the operation of the sub-committee, feeling that a lot of decisions were "made on whims" or on "how members feel at the time". Such detailed involvement is not common, and in the larger authorities it is usually only special cases of allocation, and eviction, which are dealt with by committee. This is also true in social services departments, where sub-committees make decisions in exceptional cases of child-care and grants.

Councillors are involved in a wide range of activities, their role encompassing that of "committee member, constituency representative, and party activist" (Heclo 1969, p187). Their different role orientations were identified by Newton (1976) and Gyford (1984) who

identified two main types of councillors, the "tribune", who was orientated towards individual cases and focused on the ward, and the "Statesman", who was more concerned about policy issues and the community.

However, Heclo (1969) found that many councillors preferred to be involved in detailed decision-making rather than devoting themselves to large-scale policy matters, which require intensive study and an understanding of complex financial issues. The implication of this in respect of councillors as resolvers of grievances is considerable. On the face of it, councillors appear to be excellent representatives of individual interests, and would be better at this job than at articulating wider political demands. But are those who are so close to the decisions the best people to question them? This dilemma is clearly expressed by Hill (1976):

"Indeed, inasmuch as councillors make themselves responsible for discretionary decisions, they undermine the contribution they can make as either pursuers of grievances or as members of a "court of appeal". And if they adopt an appeal role they cannot, at the same time, also be satisfactory "counsels" for the aggrieved" (p155).

There is the further problem that if councillors do become involved in the large scale issues and concentrate on policy, they will have little time to devote to individual cases. When they become involved in policy issues, they have to work closely with officials, and thus they can become absorbed into the organisation, which makes it difficult for them to be sufficiently disinterested when taking up complaints.

Widdicombe (1986), too, recognised that councillors, unlike MPs, have dual roles, being "simultaneously a representative of the local community and responsible in law for the delivery of services" (p103). Councillors are also traditionally representatives of, and servants of, the local community (p104). The representative role of the

councillor is called into question with the increasing signs that the community is not homogeneous, but is an aggregate of sectional interests (p103), some of which bring pressure to bear through councillors (p105).

There is the additional problem that they are responsible for the delivery of services, but how far they should be involved is problematic. On the one hand, Widdicombe (1986) does not believe that it is "practicable or desirable to exclude Councillors from management issues", and that "it is reasonable that Councillors should be able to ensure that (policies) are implemented" (p127). But a distinction must be drawn between the direction of general management policy and day-to-day management intervention. The danger with too much involvement in day-to-day administration is that this will alter the character of councillors "so that they become full-time administrators rather than people who are representative of the local community which they serve" (p127).

#### Members' Role in Complaint Handling

In view of the problems inherent in the various roles of councillors, I would agree with Birkinshaw (1985) that the "role of the member in representing citizens has serious shortcomings" (p68). Nevertheless their role in grievance resolution should not be under-estimated. Widdicombe (1986) found that on average a councillor spent 74 hours each month on council duties, 13 hours of which were spent dealing with electors' problems, surgeries, and pressure group activity (Research Volume II, p42). This amount of time did not vary much by the type of authority, with metropolitan districts averaging 11 hours, which suggests that the councillors' constituency role is much the same across the country. Labour and Liberal councillors on average spent more time (16 hours and 17 hours respectively) on electors' problems than did conservative councillors (10 hours).

These figures represent a sizeable proportion of time spent dealing with constituents, and it is therefore of interest to see how effective they can be in this role. While not wishing to devalue the work of councillors in any way, it seems obvious that they cannot be expected to deal satisfactorily with every complaint, because of the time involved and the complexity of some of the problems.

This difficulty is not helped by the attitude of some officers to complaints sponsored by members. Although most authorities treat member complaints with particular care, and in some cases have special systems for dealing with such complaints (eg members' correspondence to the chief executive having special headed paper and arriving via a members' secretariat), giving them special weight, this does not of itself guarantee sympathetic treatment. Some officers have complained that member complaints are little more than councillors trying to get around their own policies, and they resent the fact that applicants may receive an earlier response, for example, just because s/he has involved a councillor. Leak (1986) found "antagonistic attitudes towards councillor enquiries" (p260) and in particular there were criticisms of councillors pleading individual cases with officers, when it was as a result of council policy that funds were severely restricted (p259).

The fieldwork in the Sheffield Study supports this finding, with officers feeling that they were more concerned with equity and fair-treatment, whereas councillors were interested in vote-catching. Leak (1986) noted "a very heavy volume of enquiries in the months immediately preceding the election", which was strikingly high when compared to the following year, when there was no election (p265). There were even instances of councillors going from door to door asking if tenants had any repairs or other problems and promising to report them and have them sorted out" (p260).

During the fieldwork on the Sheffield Study, officers gave the impression that councillors did not know enough about the situation, with one social services director saying: "What does the councillor

know about schizophrenia?", a view which was implicitly endorsed by other officers who considered their decisions to be a matter of professional judgement. As such they should not be challenged by members, whose role was to "establish the policies and procedure and leave the rest to the officers." This attitude was by no means confined to social services departments. In housing matters, an area where there has always been much member involvement, some senior officers regarded it as an infringement of their professional status if a member did more than refer a complaint and then accept the reconsidered outcome. Indeed one senior housing officer interviewed said that he would regard it as a resignation issue if he were overruled by a group of members in relation to a decision he had taken. On the other hand, some officers recognised the advantages of having difficult cases decided by members, especially in situations involving the allocation of scarce resources.

The tension that can exist between officers and members was highlighted by Widdicombe (1986), who found that, irrespective of political allegiance, 59% of councillors thought that officers had too much influence over decision-making (Research Volume I, p35). Officers, on the other hand, complained of interference, and were finding that the new generation of councillors were more assertive than their predecessors (Research Volume I, p67). There was particular friction between committee chairs and chief officers. This was noted particularly by the evidence from the Federated Union of Managerial and Professional Officers (FUMPO) to Widdicombe, where there were strong complaints of recent interference in the detailed administration of councils. As an example, one committee chair insisted on reading the chief officers morning mail with him (Widdicombe 1986, p33). There was evidence of such tension in the Sheffield Study, where officers complained that in some London Boroughs, the members wanted to appoint the cleaners.

Such tension does not ensure the best service for complainants, nor does the fact that complaints appear to be taken up more vigorously by opposition members (see Birkinshaw 1985, p68). The vast majority of

councils are organised on party lines, with only 15% of councillors classified as "independent". This could therefore cause problems if members of the ruling party are reluctant to take up complaints (see Widdicombe 1986, Research Volume I, p59). Evidence suggests that this is not just confined to this country. For example, most of the complaints brought to the Alberta State Ombudsman originate from elected members who sit on the opposite side of the Assembly (see 17th Annual Report of the Ombudsman for Alberta for 1983, p55). This seems to indicate that the members' commitment to complaint handling may be more to do with political point-scoring, rather than a sense of justice, a point noted by Leak (1986) who concluded that the "resolution of the individual trouble case was by no means necessarily disinterested" (p271).

Whatever the views about the motives of councillors in taking up complaints, their effectiveness depends on their ability to obtain the necessary information. The councillor may be further hindered in his/her duties by the fact that, although they have a right to inspect documents wherever this is necessary for the performance of their duties (see R v Barnes B.C. ex parte Conlan (1983) 3 All ER 226), they do not have a roving commission to go through council documents. They are only entitled to see such documents as are reasonably necessary to perform their duties. Improper or indirect motives can disbar, and the decision to disclose documents to the councillor is for the council itself to decide, or the committee if there has been delegation. Thus the councillor is entitled to have access to all written material in the possession of the local authority as long as s/he has good reason. In the case of a committee of which the councillor was a member, there would normally be good reason for access to all the committee's written material. In other cases a "need to know" would have to be demonstrated. In the last resort it would be for the council to determine, subject to judicial review under the Wednesbury principles. (See R v Lancashire C C Police Committee ex parte Hook (1980) QB 603 HL; R v Birmingham City D C ex parte O (1983) AC 578).

The Local Government (Access to Information) Act 1985 gives a statutory right of access to documents for members. Any document in the possession or under the control of the council, containing material relating to any business to be transacted at a meeting of the council, committee, or sub-committee, is to be open to inspection by any council member. There is no right to inspect where it appears to the proper officer (a function usually designated to the chief executive) that a document discloses certain classes of exempt information. This right of inspection is expressly stated to be in addition to any other rights that a member may have (Local Government Act 1972 section 100F, added by Local Government (Access to Information) Act 1985 section 1). At the time of the Sheffield Study the impact of this was not yet known, although such legislation can only improve the ability of a councillor to pursue a complaint for a constituent.

Previous research has revealed serious shortcomings in the role of the member in representing citizens with complaints. Maud (1967) concluded that councillors needed to "understand sympathetically the problems .... of constituents", and had to be able to convey them to the authority (Volume 2, p143). Cockburn (1977) and McAuslan (1980) believed that the role of councillor in grievance resolution, was diminished in local government. Justice (1980) also had misgivings about councillors' effectiveness in taking up complaints which may involve the Local Ombudsman, because on the one hand "they could make political capital out of a reference to the CLA" or, on the other hand "they were alarmed at the prospect of becoming involved in a complaint against the authority", or "they had simply forgotten what the correct procedures were" (para 254).

There is also evidence that members of the public do not trust councillors to take up their complaints, many feeling that they are not independent of the council. Watchman's research (1985) in Scotland found that there was distrust of members by the general public. Widdicombe (1986) had a mixed response: some 20% of the electorate had had some contact with a councillor, and 26% had made a

complaint at some time. Most were dissatisfied with the response (Research Volume 1, p41). Even though there was a lower level of dissatisfaction if the complaint was made to a councillor (48%) than if the complaint was made to a council officer (60%), such a high dissatisfaction rate calls into question the role of the elected member in this area. In the Sheffield Study, discussions with tenants associations and community groups in some of the larger authorities visited produced a mixed response to local councillors, especially when dealing with persistent or resistant complaints. This confirmed that, whatever the role of the councillor, and while in no way undermining their value, formal grievance procedures are needed, as the good offices of councillors alone are not adequate to deal with the range of grievances encountered.

The limited role of the councillor as a citizen's champion is also emphasised by Widdicombe's research, which found that of the 301 consumers who had complained, only 33% complained to a councillor, compared with 61% who complained to council officers, and only 4% complained to their MP (Widdicombe 1986 Research Volume III, p54). The Sheffield Study survey of complainants whose complaints resulted in a referral to the ombudsman indicated results consistent with Widdicombe. Over 63% of the sample in the Sheffield Study took their complaint to an officer of the authority in the first instance; 27% approached a councillor, and less than 2% approached their MP.

In the Sheffield Survey, a hypothetical question was asked to see to whom consumers would complain, if a council department failed to give a satisfactory result. Only 15% mentioned the local councillor, but 40% of consumers said that they would refer the matter to their MP. There is some consistency here with Widdicombe's findings, as when asked a hypothetical question about the most effective course of action to challenge the council's decision, the highest score was accorded to the MP (22%), followed by the councillor (18%) (Research Volume III, p55). The Sheffield Study fieldwork experience confirmed that many members of the public regarded the member as part of the organisation being complained against, and would be reluctant to



approach them. This is even more the case in ombudsman matters, where a large number of ombudsmen referrals come from opposition members. Councillors are considered to be too bound up with the decision making process to be distanced from the offending decision.

There is the additional problem that the members' conduct itself may be the reason for the complaint. Under the Local Government Act 1972 sections 94-98, if a member has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter, and is present at a meeting when it is discussed, s/he must disclose that fact and refrain from the discussion and voting. Breach of this duty is a criminal offence. In addition to this, the standing orders of the authority may provide for the exclusion of such members from the meeting, with the proviso that the member may remain if the majority of those present at the meeting so decide (see Cross and Bailey 1986, p58). A member is not treated as having an interest, if it is so remote or insignificant that it could not reasonably be regarded as likely to influence him/her in discussion and voting, and an interest which a member has merely as a ratepayer, inhabitant of the area, or person entitled to participate in any service offered to the public is also excluded (Local Government Act 1972, section 97).

In addition to this statutory obligation, the National Code of Local Government Conduct (DoE 1975) gives guidance to councillors on their conduct. The code states that:

"It is not enough to avoid actual impropriety and you should at all times avoid any occasion for suspicion or the appearance of improper conduct. The law makes specific provision requiring you to disclose pecuniary interests, direct and indirect. But interests which are not pecuniary can be just as important. Kinship, friendship, membership of an association, society or trade union, trusteeship and many other kinds of relationship can sometimes influence your judgement and give the impression that you might be acting for personal motives. A good test is to ask yourself whether others would think that the interest is of a

kind to make this possible. If you think they would, or if you are in doubt, disclose the interest and withdraw from the meeting unless under Standing Orders you are specifically invited to stay".

Where a councillor's business or personal interests are closely related to the work of one of the council's committees or sub-committees, s/he should not seek or accept the chair of that committee or sub-committee, and s/he should seriously consider whether membership would involve him/her disclosing an interest so often, s/he would be of little value to it or would weaken public confidence in its impartiality. The National Code is often incorporated into the standing orders of individual authorities. Widdicombe (1986) found that 82% of authorities had formally adopted it, and it was made use of without formal adoption by a further 12% (p107).

Failure to comply with the present code will be regarded by the Local Ombudsman as maladministration, even if the code is not incorporated in the standing orders (see Local Ombudsman Reports 89/C/0826; 89/C/0037; 89/C/0212; 89/C/0334). Some recent reports of the Local Ombudsman reveal some serious breaches of the Code (see 88/C/472; 88/C/1538) and sometimes of the Act. For example, in one case (88/B/517) the councillor, who was also vice-chair of the planning committee, was involved as an applicant in a number of planning applications. Another case (88/A/0006) caused the ombudsman to remark that the councillor's actions "amount to one of the most blatant breaches of the Code I have seen, and can only have done great harm to the reputation of the council and to local government in general".

Although these cases are exceptional, they do little to uphold public confidence in councillors, and they illustrate the problems with relying too heavily on councillors as champions of complainants. Although the Local Ombudsman must be applauded for making it clear that they normally regard breach of the Code as maladministration, it is disturbing that Widdicombe (1986) found that councillors are not as conscious of the Code "as should be the case" (p107). This is one

area where there is a need for induction training of new councillors, but Widdicombe found that "arrangements were patchy" (p163).

The situation may also be improved as a result of the Local Government and Housing Act 1989. Section 19 empowers the Secretary of State to make regulations, which would require members to notify the proper officer of any direct or indirect pecuniary interests they may have. The register of members' interests would be open to public inspection. There is also provision for the Secretary of State to issue a National Code of Local Government Conduct, after consultation with representatives of local government (section 31) and the form of declaration of acceptance of office by the member may include an undertaking to be guided by the code in the performance of council duties. The Local Ombudsman's powers in relation to members will also be strengthened by the Act. Section 32 provides that if the Local Ombudsman issues an adverse report, and that a member was involved in the maladministration and that the member's conduct constituted a breach of the statutory code, then (unless the Local Ombudsman considers it unjust) the report shall name the member and give particulars of the breach. In addition, when a councillor is criticised in an Ombudsman's report, the councillor will not be permitted to vote on matters relating to the report (see CLA Annual Report 1989/90, p8).

The effect of these changes is yet to be seen, and despite the limitations of councillors as a method of dispute resolution, there is no doubt that within local government this is seen as a vital and important aspect of their work. Members who were interviewed during the Sheffield Study fieldwork were at pains to emphasise that the member is an effective complaints device. Indeed one councillor went so far as to say that the local ombudsman was not really necessary as his authority had 50 local ombudsmen - the members. The particular value of the member appears to be that their special status will often ensure the triggering of any complaints procedure which does exist within the authority.

One of the concerns of the Sheffield study was to see what part members played in any complaints procedure which existed. As members ultimately are responsible for actions of the authority, it could be thought that they would have an active role in handling resistant disputes which were not satisfactorily resolved at officer level. As shall be seen (Chapter 7) only a minority of authorities claim to have a formal procedure for handling complaints, and within this minority, only one-third use a committee or sub-committee of members as a final link in the grievance chain.

This is surprising, given that many decisions taken by officers are not purely managerial, relating to the mechanical application of pre-existing rules or policy. Officers have a great deal of discretion, where there is room for genuine differences of opinion. One would have thought that councillors had a role to play in this area, but although some senior officers saw the advantages of difficult cases being decided by members, this was not the norm.

One area where member involvement was found to be useful, during the Sheffield Study fieldwork, was as negotiators or conciliators, and in this respect the role of committee chairs is important. For example, in one metropolitan district, the chair of the planning committee would discuss contentious planning applications with the planners and applicants before the appeal stage. In housing departments in particular, lettings officers would often discuss matters with committee chairs as a way of trying to avoid disputes. These informal attempts to avoid disputes were noted by Birkinshaw (1985, p71), especially in cases where there are statutory protections for consumers. Thus, he says, that "some statutory obligations have a tendency to produce additional administrative practices which result in increased procedural protection", in particular by authorities displaying "a willingness to conduct informal meetings with applicants or licensees" (p71). The Sheffield Study found that such informal negotiation was common practice, and that these negotiations involved the members as well as officers.

To conclude, then, elected members play an important role in dispute resolution which should not be underestimated, a role which can have two distinct aspects. Firstly, they can be used as a trigger, to alert the authority to the complaint, and despite the problems outlined, this can be seen as a major aspect of their dispute resolution role. At the other end of the grievance chain, elected members could be involved in settling resistant disputes which had not been satisfactorily handled at officer level. This would be a valid role for them, as they ultimately have responsibility for the way the authority conducts its affairs, although, as shall be seen in later chapters, few authorities have procedures with this level of member involvement.

However, their role in dispute resolution is limited by a number of factors. Firstly, they cannot deal satisfactorily with every complaint, because of constraints of time and the complexity of many of the problems. Added to this is the ambivalent feelings of officers towards members exercising this role, which may restrict their effectiveness. There is also some evidence of member distrust by the general public, and certainly a feeling among officers that members use complaints for political motives, a view supported by the fact that complaints seem to be more actively pursued by opposition members than by members of the ruling party. Complaints also seem, at times, to be used for electioneering purposes.

There are also situations where it is the conduct of the councillors themselves which gives rise to the complaint, as evidenced by some Local Ombudsman cases involving conflict of interest. Even where councillors' conduct is not in question, they can be too close to the decision to be disinterested in the outcome of the complaint. This is why a formal complaints procedure, which does not depend on a sympathetic councillor is essential, so that all complainants will be able to have their grievance discussed. This will not undermine the councillors' role, as there will always be those constituents who need, or desire, help from their representative. There is little evidence to support the councillor who believed that the members were

in effect local ombudsmen. As the decision makers, they are not appropriate to handle complaints about that decision. In essence, an ombudsman has to be outside the organisation which is the subject of the complaint, but councillors, unlike MPs, have executive authority within the organisation. It is for this reason that the introduction of the Local Ombudsmen system is important and its role in grievance handling will be discussed in the next chapter.

## CHAPTER 5 THE LOCAL OMBUDSMAN

### Introduction

The last chapter concluded that, valuable though local members may be in complaint handling, there were shortcomings, and therefore some examination of the impact of the Commission for Local Administration (the Local Ombudsman) would be useful. This is the concern of this chapter. The investigation of the operation of the Local Ombudsman system is worthwhile for two important reasons. Firstly, the Local Ombudsman is a method used by members of the public to resolve individual grievances, and it is therefore of interest to see how well it performs this function. Secondly, although in the Sheffield Study no clear correlation was established between the existence of published grievance procedures and the numbers of complaints accepted by the Local Ombudsman for investigation for individual authorities, the existence of the Local Ombudsman does affect the way local authorities respond to complaints, so it is of interest to see the extent of the Local Ombudsman's impact on local authority procedures.

The Commission for Local Administration was set up by the Local Government Act 1974, which established three commissioners for England (north, south east and south west regions) and one commissioner for Wales. The Scottish equivalent was set up in 1975. For the purpose of the Sheffield Study the focus was the English Commission, although some pilot work was done in Wales, and the work of Watchman (1985) is used to give a Scottish perspective as appropriate.

The method employed in the Sheffield Study was designed to give as full a picture as possible of the system, and was approached from a number of perspectives. All past and present ombudsmen were interviewed about their work, together with the directors of the three area offices, and files were examined at the CLA office in London. The local authority view of the system was gained from a series of questions in questionnaires addressed to chief officers asking about the impact of the Local Ombudsman on the running of particular

departments. During the Sheffield Study fieldwork the method of handling Local Ombudsman complaints was examined, by interviewing those with responsibility for Local Ombudsman liaison, and by examining complaints files, some of which became the subject of formal investigation. The consumer view was obtained by a questionnaire which was sent to 300 people ( 1 in 10 ) who had complained to the Local Ombudsman in a six month period during the course of the Sheffield Study, chosen at random, and from information obtained from the Sheffield Study consumer survey, which contained questions about perceptions of the Local Ombudsman.

#### The Role of the Local Ombudsman

The official objectives of the Local Ombudsman as set out in each Annual Report, are as follows: -

"The Commission's main objective is the investigation of complaints of injustice arising from maladministration by (local authorities etc) with a view to securing where appropriate both satisfactory redress for the complainant and better administration for the authorities.....

The supporting objectives of the commission are:

To encourage authorities to develop and publicise their own procedures for the fair local settlement of complaints and to settle as many as possible;

To encourage the local settlement of complaints made to the Local Ombudsman;

To make the Local Ombudsman system known as widely as possible and to advise people how to make their complaints;

To secure remedies quickly for those whose complaints are justified;

To issue guidance on good administrative practice to local government and to relevant bodies;

To guide those with complaints outside the jurisdiction of the Local Ombudsman;



To support the work of other Ombudsmen"

(CLA Annual Report 1989/90, p3)

It was thus set up primarily as a method of handling individual grievances involving local authorities, although the work is not confined to individual issues, and it is important to note that as well as "satisfactory redress" the aim is to achieve "better administration". However, the great bulk of their work does centre around individual grievance handling, and, from the Sheffield Study interviews with past and present ombudsmen, this is certainly how they see their role. For example, one said that the Local Ombudsman tries to find an acceptable solution to grievances. Another said that the primary concern was to secure a remedy for an individual's grievance, secondly to help the particular local authority to administer better, and lastly to try to encourage better practices generally. This was the commonly held view. Indeed, only one Local Ombudsman said that the primary role was to ensure good local administration, insisting that the ombudsman was not there to ensure that the complainant won, but that the correct solution to the problem was reached, and that the Local Ombudsman is not on anyone's side, other than that of "good" administration.

Although these two aims need not be mutually exclusive, there is some tension between the two roles, and they can result in a different relationship with local government, which may be happy to co-operate with individual grievance redress, but not so happy to see the CLA having a roving commission to comment upon their procedures. One director thought that too much emphasis on the second role meant that the Commission became too much like management consultants, and a past ombudsman emphasised that the CLA was not an "efficiency unit".

The British model is basically one of compromise, with some attempt to improve procedures where possible. There is also much emphasis on informal settlement, but in these areas there could be a danger that an individual complainant is satisfied at the expense of a thorough investigation of an authority's procedures. Although most of those

interviewed were at pains to stress that the Local Ombudsman would not be compromised in this way, when pressed some were prepared to admit that an informal, speedy, local settlement could be better for an individual complainant than a printed report in six months time. When pressed about the other potential complainants who may be affected by poor procedures, the response was that it was up to them to make their own complaint. Baroness Serota has said that the procedures are designed to support the "traditional process of remedying grievances wherever possible within the democratic local government framework" (Annual Report 1981/82). And Yardley (1983) has emphasised the view of the primary responsibility to the complainant as follows:

If a local settlement is reached which is agreeable to both the council and the complainant, and acceptable to the Local Ombudsman, there is nothing further which needs to be done on the issue in point, and it is unnecessary to draw further attention to the defect which has been discovered" (p526).

The government (see Government Response to Widdicombe 1988) has recognised that there is scope for extending the Local Ombudsman's role to improve "the quality of administration generally", so that the Local Ombudsman would have "a developing role in the prevention of future, as well as a cure for past injustice and maladministration" (p30). It was suggested that the Local Ombudsman should take greater advantage of the opportunity in their reports to comment on "the adequacy or otherwise of the procedures in individual authorities" (p30) and to "advise and comment on local authority procedures generally, on the basis of the wealth of experience they have gained through investigations" (p31).

In order to do this there have been legislative changes, so that the Local Ombudsman can take a wider and more assertive role. The Local Government and Housing Act 1989 makes provisions for widening the role of the Local Ombudsman by extending their powers to enable them to issue advice on good administrative practice (section 23). This is statutory recognition of the valuable function already performed in

this area, and it seems that the Commission hope that additional resources would be made available to assist them (CLA Annual Report 1988/89, p55). It is also proposed to give the Commission power to enable them to appoint additional "non-investigate", or advisory, commissioners, who could provide general advice to the Commissions on efficiency and good practice (section 22). There is also a requirement that local authorities notify the Local Ombudsman of the steps taken, or to be taken, to rectify any administrative shortcomings identified in an adverse report (section 26).

#### Maladministration and Injustice

The main objective of the Commission is the investigation of complaints of injustice alleging maladministration, and the tension in the two roles of the CLA can be seen in the concept of maladministration. This has developed in a pragmatic way, and it is not based upon a systematic attempt to settle principles of good administration which are then applied as appropriate. The three commissioners do not sit as a commission, which has resulted in a marked lack of development of settled principles and some inconsistency.

Watchman (1985) did develop categories of maladministration, but maladministration is not defined by statute, and although one could probably suggest that certain actions (or inactions) would give rise to such a finding (eg failure to follow own procedures, failure to fulfil statutory duties, failure to keep proper records, unreasonable delay) it is by no means certain that lapses here will result in findings of maladministration (eg Reports 397/C/84; 297/J/84). Although Watchman believes that situations where there is no standard procedure for responding to complaints should amount to maladministration, the Sheffield Study found that in general Local Ombudsmen had been reluctant to describe scant procedures or lack of them as maladministration per se, without particular evidence of injustice being caused. This is another illustration of the tension between the role of the Local Ombudsman as a resolver of the

individual trouble case, and as an instrument for improved administration.

There were some cases where the Local Ombudsman did appear to be taking a strong stand against poor procedures (eg 689/Y/84; 269/Y/84; 238/S/82; 247/Y/85; 706/Y/83), but all too many where there was a general reluctance to suggest that minimum standards should be adopted. However, recent reports seem to be revealing a trend towards insisting on certain minimum standards. For example, incomplete record keeping has been criticised (88/A/0015), as has poor liaison between departments (88/A/1067), lack of records of an inspection in building work (87/B/1245) and a case where files had gone missing (88/C/1727). In that case the ombudsman criticised the council's handling of the complaint as being "less than ideal".

During the Sheffield Study there was little evidence that the Local Ombudsman regarded the giving of reasons as a basic requirement in administration, breach of which will give rise to maladministration, but in a recent case (88/A/2329) the ombudsman declared that good administration "requires that reasons are given for administrative decisions, and a proper note should be made of such decisions". This was referred to as a "breach of elementary administrative procedure", which gave "the impression that decisions are arbitrarily made". The ombudsman insisted that the council should "immediately minute and disclose reasons". This indicates a move away from some of the cases examined during the Sheffield Study when there was criticism on occasion of the absence of minutes, but it had not been declared to be maladministration.

Further developments in the area are encouraging, notably the expectation that all local authorities have internal complaints procedures, and that "a failure to have one or to rely on one which is incomplete or inadequate may lead to a finding of maladministration" (CLA Annual Report 1988/89, p6). This is borne out by recent reports. For example, in one case (87/A/453) the ombudsman declared that "good administration requires that authorities should have effective and

clear internal complaints procedures", and that a "failure to have arrangements whereby legitimate complaints may be dealt with speedily and fairly may well in itself amount to maladministration". In another case (88/A/0763) the authority was criticised because there was no evidence to suggest that complaints had been properly investigated: "In fact it seems that little attention was paid to them at all". One authority, which did have a complaints procedure, was criticised because it was not adhered to (88/C/1083).

A particular problem which appears to be confronting local authorities at the present time is staffing and resource problems. The ombudsmen recognise this, but nevertheless find maladministration. For example in one case (88/A/0709), which concerned delay in finding a place in a new school for a child who had been expelled the ombudsman knew that the authority had "severe staffing and resource difficulties", but nevertheless the delay constituted maladministration. In some "right to buy" cases (88/C/1692; 88/A/833; 88/A/1341; 88/A/1412) the ombudsmen "sympathise" and "do not underestimate the difficulties" which councils have to face when their scarce resources are inadequate, or they fail to recruit staff, particularly in legal departments. Nevertheless, it was found that the failure to meet the timescale imposed by statute constituted maladministration. In a case involving delay in processing an improvement grant (88/A/1054) due to acute staff shortages and financial difficulties, the ombudsman would not allow this to "serve as an excuse for a failure to undertake a duty imposed by an Act of Parliament". It is difficult for the Local Ombudsman to find otherwise when there is a clear statutory duty and statutory timescale, but equally, if the councils are employing their resources and staff in the best way, one wonders whether such findings can solve the problem.

Section 31 of the Local Government Act 1974 provides that the authority concerned only has to consider a report where there has been a finding of injustice caused as a result of maladministration. Thus maladministration without individual injustice will not require any action from the authority concerned, emphasising once more the Local

Ombudsman's primary role as being concerned with the individual trouble case. There may be poor procedures and maladministration revealed during the course of the investigation, but without injustice, the authority need do nothing.

However, in recent reports there does seem to be an attempt to find injustice where there has been a clear case of maladministration. For example, in one case (87/B/1350) the injustice was the fact that the complainant had had to correspond with the council and pursue the matter over an unnecessarily long period. This approach is reflected in some of the remedies suggested. For example in one case (88/B/0774) where the injustice was found to be the loss of a business opportunity, this was to be remedied by a payment "to reflect the time and trouble involved in pursuing the complaint", and in another case (88/B/110) the council were asked to apologise and pay £100 to the complainant for his "time and trouble".

The Sheffield Study found a lack of consistency in following up on procedures which were found to be unsatisfactory. Although sometimes Commissioners did follow up the authorities concerned (in some cases even issuing second reports) this was by no means the general practice, and eventually it was admitted by senior officials that the Local Ombudsman exercised "discretion" over the closing of a file when procedures were found to be defective.

Again this situation may be improving, as there are references in the reports to actual improvements in procedures as a result of the investigation. For example, in one case (88/A/878) the ombudsman was pleased to note "that the allocation system had been reorganised", so that "such mistakes should not recur". And again, in a case where there was a finding of poor judgement, but not maladministration (88/A/2144) the ombudsman said:

"I am nevertheless pleased to see that new procedures have now been adopted which may help to avoid this happening in future"

In another case (88/A/647) the council had recognised that their system for administering grants was cumbersome, and had improved it. Alongside this are the cases where councils were called upon to improve their procedures (88/A/0763; 88/C/1083; 87/B/1350) but how far this was monitored by the Commission is not known. This situation may be improved by section 26 of the Local Government and Housing Act 1989, which requires authorities to notify the Local Ombudsman of the steps taken to rectify administrative shortcomings. What procedures the Commission will introduce to monitor this is yet to be seen.

This provision certainly lends force to the argument that the Local Ombudsman ought to be playing a more effective role in overseeing administrative practice. This was the view of a number of local authority officers interviewed, during the Sheffield Study, who thought the role of the Local Ombudsman was to criticise and help to improve procedures. In New Zealand, for example, the ombudsman can recommend that practices which are unreasonable or unjust should be altered or that the law should be changed (see Lundvik 1981), and the same is true for Denmark (see Nielson 1983).

Baroness Serota, the first chair of the Commission in England, has said that there should be a Code of Good Administrative Practice (Serota 1983, p39), a suggestion which was also made by Justice (1971). Australia (Administrative Decisions [Judicial Review] Act 1977), and Sweden (Administrative Procedures Act 1971), have such practices, and indeed it has become a common feature of ombudsmen systems that they do make recommendations for reforms and improvements (see International Ombudsmen Conference, 1980). The newly introduced statutory duty of notification of steps taken to rectify procedures by a local authority following the investigation of a complaint, reinforces the idea that the ombudsman is an overseer of good administration as well as being concerned with the individual trouble case.

### Public Awareness of the Ombudsman

One of the reasons for looking in detail at the Local Ombudsman was that it is a method used to resolve individual trouble cases. How well it performs this role must depend to some extent on the public knowing it is there to be used. However, studies have shown that the level of awareness by members of the public is low.

The Sheffield Study consumer survey, which was conducted in a borough with a good complaints handling record, and where there were strenuous efforts to afford publicity for the Local Ombudsman revealed that only 38% of respondents were aware of the Local Ombudsman's existence, the levels of awareness, not surprisingly, being higher among private sector residents than council house tenants. When asked to whom they would complain if the local authority did not resolve a complaint satisfactorily, only 13% said the Local Ombudsman, compared to 40% who mentioned their Member of Parliament. About half of those who had heard of the Local Ombudsman mentioned media coverage as their source of knowledge. There was little evidence that the local authority had made any successful attempt to educate people on the matter. Almost one-third of those who had heard of the Local Ombudsman system were unaware of, or unable to articulate, the nature of its role, and again this lack of knowledge was more common among council house tenants.

In a recent Annual Report (1988/89) the ombudsmen indicate their awareness of this problem, and concern is expressed that the service is not widely enough known (p8). A revised booklet has now been published, which is available for local authorities, citizen's advice bureaux, consumer advice centres and other voluntary organisations.

Even though aware of the Local Ombudsman the fact that a complaint has to be in writing (section 26[1][a]Local Government Act 1974), may be a serious impediment to some complainants. The ombudsman receives many hundreds of telephone calls and some personal visits, and it may be that some complaints are not coming through because of this requirement. The Justice (1980) research supports this view, as does



the Sheffield Study with 25% of the Local Ombudsmen complainants saying that they found it difficult to put their complaint in writing. This is a worrying enough figure in itself, but especially so when the sample consists of those who are sufficiently motivated to answer a postal questionnaire. The Sheffield Study fieldwork reinforced this view, that people do not find it easy to formulate their complaints.

This requirement is not out of line with most ombudsman systems, although there are notable exceptions. For example, the Commonwealth Ombudsman of Australia, allows such complaints, which have now become more common than written ones. They also, incidentally, appear to be resolved more often in the complainant's favour, than do those received in writing. There is also a system where the ombudsman visits areas, advertising this fact in the press, so that people can come with their complaints. The ombudsman can be contacted by phone, and if the problem does concern the ombudsman, the complainant is informed of the next visit of the ombudsman to the vicinity, and invited to come along and talk about it (see Commonwealth Ombudsman Annual Report 1983-84). Although no-one seems to be pressing for a change in this area, some thought may need to be given to it, especially in the light of changes relating to direct access.

#### Access to the Ombudsman

One recent improvement in the system is the removal of the member filter for ombudsman complaints, introduced by the Local Government Act 1988. Before this, submission of complaints to the ombudsman had to be made through a local member (section 25(2) Local Government Act 1974). Such a requirement presented an obstacle to those wishing to bring a complaint, and it was criticised (see, for example, Justice 1980). The Sheffield Report itself lent support to the criticisms, the research finding that the majority of officers and members interviewed felt that the requirement could no longer be justified. Indeed, in some authorities officers would, after detailed investigation, actually encourage members to submit complaints,

especially in the case of tiresome complainants or resistant complaints.

The justification for the "filter" principle (which existed only in Britain and France) appeared to be that the local authority should have an opportunity of investigating the complaint itself. However, as there is a statutory obligation (Local Government Act 1974, section 26[5]) on the Local Ombudsman to ensure that this has been done, the member filter appeared superfluous. Apart from this, the Sheffield Study indicated that many members of the public often regard the member as part of the organisation complained against (a not unreasonable assumption, given the extent to which local councillors are bound up in the decision making-process) and are thus reluctant to seek their help in submitting a complaint.

Widdicombe (1986), also recommended change in this area, and before the law was changed the CLA devised its own method of overcoming the problem. Since 1984 all complaints received directly were referred to the civic leader with a request that they be settled locally, or formally referred by a member (see 3rd Report from the Select Committee on the PCA 1986, p46). In the Sheffield Study, most local authorities visited had adopted practices to deal with such direct complaints, so that members (sometimes the Leader of the Council or Lord Mayor), sponsored them as a matter of routine. In Scotland, the Scottish Local Ombudsman developed a practice of following up directly referred complaints after one month to see if satisfaction had been achieved (see Bratton 1984, p13).

Such practices are now no longer necessary, as, since May 1988, members of the public can complain directly to the Local Ombudsman. In the first year of the changed procedure, the number of complaints rose by 44% (CLA Annual Report 1988/89, p4). This increase is partly attributed to the growing public awareness of the Commission's services, but it also illustrates the disincentive imposed by the member filter in discouraging what may have been valid complaints. Indeed, a comparison of the figures for the year ending March 1989

(where 72% of complaints were sent directly to the ombudsman, and 28% were referred by members) with those from 1988 (42% sent direct, 58% referred by members) demonstrates that the removal of the member filter has had a significant effect on the method by which people send their complaints to the Local Ombudsman (CLA Annual Report 1988/89, p10). In 1989/90 there was a further increase, to 83%, of complaints sent directly to the ombudsman, and indeed there was a record number of complaints altogether, the total being 8,733 (CLA Annual Report 1989/90, p11). Such an increase also indicates that complainants are not having their problems resolved at a local level, due, presumably, to a lack of decent procedures within the authority.

#### Satisfaction with the Ombudsman System

Evidence from the Sheffield Study suggests that local authorities are learning to handle the Local Ombudsman and see it a less of a threat than it was before. Some authorities do look to the Local Ombudsman for advice and guidance, but the general impression gained was that local government had learnt to accommodate it.

Over 80% of the Sheffield Study questionnaire responses from local authorities expressed satisfaction with the thoroughness, fairness and impartiality of the Local Ombudsman. The only major criticism, such that it was, concerned delay, especially at the informal process stage. Other criticisms were that the system was expensive; that there was not enough opportunity to contest findings of fact; and that there should be a right of appeal from investigation findings, but only a small minority mentioned these. The general feeling was that local government looked favourably on the Local Ombudsman, a fact commented upon by the ombudsmen themselves:

"For the most part local authorities respect and value the Local Ombudsman system, realizing that they and we both have our part to play in ensuring that the most reasonable standard of local administration is maintained within the limits of human frailty".  
(CLA Annual Report 1989/90, p18).

The respondents to the Sheffield Survey were satisfied with the general process of investigation, especially the taking of oral evidence. It may be worth noting that most of the world's ombudsmen appear to regard this feature of the British practice as the best in the world (see, for example, Gwyn 1983).

On the other hand, consumers of the system appear to be not so satisfied. 70% of the respondents to the Sheffield Study of CLA complainants questionnaire expressed dissatisfaction with the way their case had been dealt with. Over half were critical of the conduct of the investigation, but there is the problem of not being able to please everyone as almost the same number were critical because they thought the inquiry was conducted too slowly, as were critical because they thought it had been too quick.

In only 12 of the 148 responses had there been a finding of maladministration and injustice and it may therefore have been that the major objection and cause of dissatisfaction was in losing the case. Of the 148, 53 had their cases accepted for full investigation, and, besides the 12 mentioned above, in 4 more cases maladministration was found, but without injustice. Only 8 of the 53 respondents, where there had been full investigation, expressed satisfaction with the way the case was dealt with, 7 where maladministration and injustice was found, and one where the case was discontinued, presumably because some satisfactory local settlement was reached. As the Sheffield Study research produced evidence of the high standard of work, courtesy and concern by ombudsman office staff and investigators, the major complaint seemed to be failure to accept that the case had been lost. It may be that expectations are too high, or that the jurisdictional limits, especially that of proving maladministration, are not fully grasped by complainants. The Scottish Local Ombudsman has commented that these limitations do produce these effects. (see CLA Annual Report 1983/84).

What was perhaps more disturbing was that 44% of the sample said that they would not use the Local Ombudsman again if they had further cause

to complain. Part of the problem may result from some of the ombudsman's office procedures. For example, some of the letters to complainants examined on files during the Sheffield Study were unnecessarily curt and peremptory. Also, although the aim of the Local Ombudsman is to encourage local settlements, complainants may have felt that nothing had in fact been done to resolve their case. There may have been a decision not to investigate, based on an assurance by the local authority that they would go some way to meeting the complainant's wishes, but all that the complainant had received was a letter saying simply that there had been a decision not to investigate. In some circumstances there was no follow-up by the Local Ombudsman to see that the local authority had honoured its promise.

Justice (1980) also found evidence of dissatisfaction from consumers. However, whereas they found that 47% of those bringing planning cases were dissatisfied with the role the Commission had played, 68% of those involved in housing cases were very satisfied. It is suggested that the reason for this difference is that it is easier to devise a remedy that would satisfy a complainant in housing cases (p83).

#### Limits of the Ombudsman's Jurisdiction

The Local Ombudsman is empowered to investigate complaints of injustice arising from maladministration, but is not allowed to look at the merits of decisions, nor question policy (Local Government Act 1974, section 34(3)). The distinction between the merits of a decision, and how that decision was reached is not always clear, and, indeed in R.v. Local Commissioner for Administration ex part Bradford Metropolitan City Council (1979) QBD 278; (1979) 2 All ER 881, the court said that section 34(3) does not preclude the investigation of acts on the grounds that they were decisions taken by a local authority on the merits of a case, as taking a decision is an action taken in the exercise of an administrative function. In this case, a mother was complaining to the Local Ombudsman about the local authority's actions in respect of her children, who had been taken

into care by the authority and placed with different foster parents. The court said that the actions of the authority could be investigated.

But in a recent case (R. v. Local Commissioner for Administration ex parte Eastleigh Borough Council (1988) 1 QBD 855; (1988) 3 All ER 151) it was held that there had been a breach of section 34(3), because the ombudsman's report had gone beyond a criticism of the council's failure to follow its own policy, but had questioned the merits of the policy decision, in relation to the inspection of drains. This case raised "issues of some importance concerning the relationship between courts and the local ombudsman" (per Lord Donaldson p152), as it had been decided in the lower court that, despite the fact that jurisdiction had been exceeded, there could be no relief to the council, as to do so would in effect provide a right of appeal against the ombudsman's findings. The court of appeal, however, decided that the ombudsman's report was subject to judicial review when it was decided that jurisdiction had been exceeded. This was because of the public law character of the Local Ombudsman's office, and the fact that Parliament had not created a right of appeal against the findings in a report.

The limitation imposed by section 34(3) can therefore be problematic and cause confusion for complainants. On the other hand, there has been judicial recognition of the appropriateness of the Local Ombudsman where the courts have no role to play. For example, in Gaskin. v. Liverpool City Council 1 WLR 1549, the plaintiff, who had been in care since he was six months old, claimed to be suffering from severe psychological injuries and anxiety neurosis because of the authority's negligence or breach of duty while in their care. He applied for the disclosure of the authority's records to assist in the preparation of his case, but his application was refused on the grounds of confidentiality. The judge advised that "if there were anything in the complaints.....the right way to ventilate them would be - not by action at law - but by complaint to the local government ombudsman" (per Lord Denning p1553).

It also appears that the courts will be very reluctant to interfere with a decision by the Local Ombudsman in deciding not to investigate a complaint. In R.v. Commissioner for Local Administration in England ex parte Newman and another (1987 Court of Appeal. Unreported), the court said that section 26 of the Local Government Act 1974 gave the commissioner a discretion whether or not to investigate a complaint. While not precluding the possibility of judicial review in some (extreme) cases, the 1974 Act specifically states that "any question whether a complaint is duly made.....shall be determined by the Local Commissioner" (section 26(10)), and therefore, in this case, they were not in a position to substitute their own views for that of the commissioner.

Apart from the limitations imposed by section 34(3) of the Local Government Act 1974, there are administrative actions which are outside the jurisdictional limits of the ombudsman, which can be a source of dissatisfaction and confusion for complainants. These limits are set out in section 26 and Schedule 6 of the 1974 Act, which expressly exclude from the Local Ombudsman jurisdiction matters concerned with the internal running of schools, personnel matters, action taken in connection with the commencement and investigation of legal proceedings, and commercial and contractual matters.

A number of senior local government officials interviewed during the course of the Sheffield Study research could see no justification for the majority of these exclusions, although councillors were more reluctant to extend the Local Ombudsman's jurisdiction. The officers' views in general were that the Local Ombudsman should be able to investigate any activity engaged in by local government and while few actively recommended early review, there was no fierce opposition to extending jurisdiction.

The ombudsmen themselves (past and present) agreed that their role was unnecessarily and sometimes illogically restricted. The general view was that the Local Ombudsman should be able to investigate all local authority matters, except where there were positive justifications for

not doing so, for example, defence matters, and that the present exclusions confuse complainants.

The Representative Body, supported by the Department of the Environment, has been largely hostile to any extension. However, Widdicombe (1986) has recommended extension in some areas, and there have been instances where the Local Ombudsman stretched their jurisdiction somewhat, without challenge. Each of these exclusions will be explored in turn.

Internal school and college matters (curriculum, conduct, discipline etc).

The exclusion of internal school matters is a matter of some debate, and this exclusion does produce anomalies. For example, there can be an investigation into the treatment by a child in a local authority home, but not in a local authority school.

Education departments themselves do come within the Local Ombudsman's jurisdiction, but they do generate comparatively few complaints. In the 1980s education complaints have made up between 4% and 6% of all Local Ombudsman complaints for each year, with about the same percentage of formal investigations (see Annual Reports). The exception to this was 1984/85 when there was an increase making education complaints 7% of all complaints and 9% of all formal investigations. This increase was due to complaints about school admission appeal committees, and they simply reflected the teething problems of a relatively new system. There were fewer complaints of this sort in the following year, and the pattern followed previous years.

The Schedule 5 exclusion may explain this low number of complaints, so that problems do not become articulated at this level. Only a handful of complaints are rejected by the Local Ombudsman each year because of this exclusion, but there is no way of knowing how many more complaints there would be if the exclusion were abandoned.



As well as producing anomalies, the exclusion has also resulted in some strained interpretations. For example, in one case, a child was suspended from school in circumstances where the Local Ombudsman said that he felt the child should have received help from an educational psychologist. In the report there was criticism of the local authority and the school, although it seems that the Local Ombudsman has no jurisdiction to examine the conduct of the school (82/J/5509). And in a recent report (87/A/961) there was a finding of maladministration because of the poor treatment of a pupil after an incident at a school. The report also criticised the authority's failure to have a proper complaints procedure to deal with complaints made about the handling of the incident.

Justice (1980) criticised the exclusion and recommended that internal school matters should be brought within jurisdiction "though implementation of this may not be feasible in the immediate future for reasons of cost and limited resources" (parag 43).

In their 1980/81 Annual Report the Local Ombudsman endorsed the view that internal school matters should be within their jurisdiction:

"just as are complaints about matters internal to any other local authority establishment. If it is right that a complaint can be made about the internal running of a children's home, then in principle it must be right also that a complaint can be made about the internal running of a children's school" (p43).

This has been the consistently held view of the ombudsman, and not one of the past and present ombudsmen interviewed disagreed with it or had reservations about it. Their view is restated in the 1988/89 Annual Report, where they said that they see no logical reason why any action of a local authority in the exercise of their administrative functions should be outside the Local Ombudsman's jurisdiction" (p54).

This is in contrast to education department officers who were asked in the Sheffield Study survey whether the jurisdiction of the Local

Ombudsman should be extended to include internal school matters. Overwhelmingly 88% (29 respondents) answered in the negative, the majority (18) giving as their reason for this that the existing system was adequate because of the numerous regulations covering internal school matters, and because of the important role played by school governors in grievance resolution. Two officers raised the "floodgates" argument to explain why the suggestion was not practical.

Even so, during the Sheffield Study fieldwork, a few officers spoke positively about the extension of jurisdiction, welcoming the opportunity for a problem to be dealt with by an independent body. They could see no justification for the present exclusion and regarded schools as an extension of the education department. One town clerk commented wryly that the chief education officer would like to be able to look into the internal affairs of schools. Some officers interviewed thought that the Local Ombudsman should be able to investigate internal administrative matters, for example, failure to teach the correct set book, or failure to enter a pupil for an examination. There is no question that the Local Ombudsman would only be able to investigate "administrative" actions as in other local authority areas. Indeed, if the Local Ombudsman could investigate internal school matters it seems unlikely that there would be a huge increase in workload, as the limits of maladministration would itself exclude many complaints. It is interesting that under the Education Reform Act 1988 section 23, local authorities are to set up complaints procedures to receive complaints in respect of the curriculum and related matters. It will be interesting to see if the Local Ombudsman will receive any complaints in this area.

A number of education department officials emphasised the role of school governors in dealing with complaints, a view shared by the Representative Body which felt that it would be "both impracticable and undesirable for an outside body such as the commission to be able to investigate complaints about the internal arrangements of schools", and that "there are other ways of examining complaints eg by school governors" (CLA Annual Report 1980/81, p61). However, the Sheffield

Study fieldwork highlighted the general conviction that governors are ill-equipped to perform this role. It was said that governors do not, and cannot, act as ombudsmen. They could not guarantee impartiality, and the group pressures within governing bodies made them less objective than education departments. As one officer remarked: "Too many governors are unwilling to override the wishes of head teachers". Two chairpersons of education committees also stated that governors rarely became involved in internal school complaints.

The Education Reform Act 1988 has altered the functions and roles of governing bodies, and only time will tell whether the changes will prove effective in improving the handling of complaints, although it does seem that governors will be less able to act as ombudsmen independent of the schools, particularly as schools themselves are now being given increased autonomy from the local authority.

Despite the criticisms, the government have come out strongly against the extension of jurisdiction. They recognise that some matters, for example, allocations, catchment areas, grants, and school buses are within jurisdiction, but do not consider it desirable to extend jurisdiction to "the control and instruction of children within school", as this is a "professional rather than an administrative function" (Government Response to Widdicombe 1988, p29). It is felt that this is a serious drawback to the Local Ombudsman's role of resolving individual trouble cases, but not one which the Commission propose to pursue at the present time (see CLA Annual Report 1988/89, p54).

#### Personnel matters

The clear impression gained from fieldwork during the Sheffield Study is that this is an area where the general public feel confused, and where many people expect the Local Ombudsman to have jurisdiction. The reasoning behind the exclusion is that labour laws should be uniform in the public and private sectors, and that personnel matters are really to do with collective bargaining and industrial relations.

However, if one is referring to administrative practices in local authorities, it seems curious that, for example, a delay in paying housing benefit can be investigated, but a delay in paying a local authority pension to an ex-employee or his/her family cannot. It also creates the anomaly that, for example, maladministration could be found if an application for council property was lost, but not if it were an application for a job with a local authority which was lost.

Those interviewed in the Local Ombudsman's office found this exclusion irritating, especially in relation to potential and ex-employees. Other countries do have such jurisdiction. For example, in Australia the Commonwealth Ombudsman investigates complaints relating to recruitment, compensation, and retirement benefits (see Commonwealth Ombudsman and Defence Force Ombudsman Annual Reports 1984). Since 1976 the French Mediateur has been empowered to receive complaints from former or retired public servants (See Clark 1984, p171).

Although Widdicombe (1986) saw that the primary function of the Local Ombudsman was "to provide support for the consumers of local government services rather than those who are employed to provide them", concern was expressed about potential staff, and a code of practice was recommended governing officer appointment procedures, breach of which would constitute prima facie maladministration, which would allow an applicant to complain to the Local Ombudsman (p221). It appears that the main concern here is with the so-called "political appointees" (p156), and it is interesting that, while the government do not want to extend the ombudsman's jurisdiction in this area, they have taken steps to prevent "politically biased or prejudiced selection and appointment procedures" (Government Response to Widdicombe 1988, p30). In general, however, they consider that personnel matters are essentially concerned with relations between employer and employee, and not with the relations between a public authority and the public, and that therefore they should not be subject to Local Ombudsman scrutiny (Government Response to Widdicombe 1988, p30). Again, while not agreeing with the government's view on

this, the Commission do not intend to pursue it at the present time (see CLA Annual Report 1988/89, p55).

#### Commercial and Contractual Matters

This exclusion prevents the Local Ombudsman from investigating actions taken by a local authority relating to contractual matters or commercial transactions and its inclusion in Schedule 5 appears to be because there is a similar exclusion in the 1967 Act for the Parliamentary Commissioner. However, the situation of central government is not the same as for local government. Firstly, it appears that the exclusion for the PCA was really to do with the Ministry of Defence and concern with national security. In local government, there have been many scandals over the years associated with commercial matters, especially in connection with the tendering process, and with the need for members to declare their interests where contracts are being negotiated.

The Local Ombudsman and their staff want to see an end to this exclusion, and there is evidence that they are accepting complaints in this area. For example, in a recent case involving Waltham Forest, they investigated the allocations of market stalls at Walthamstow market, at the request of the chief executive. Although the Act precludes the investigation of complaints about markets, they called it "a complaint about the operation of a public act".

Recent reports contain further examples of investigations in this area. There have been some (88/C/1377; 88/C/0776) concerning delays about registration of private residential homes for the elderly, which are commercial enterprises. One case (88/B/0774) involved a loss of a business opportunity, and another (87/B/295) was concerned with the assignment of a lease. In another case (88/C/1136), which concerned a shop tenancy, the fact that this may have been a commercial matter was not alluded to at all in the report. Nor did the exclusion prevent the investigation of two cases (87/C/205; 87/C/706) which involved the use of an unreasonable and misleading method to select firms of

undertakers with a view to advertising their services, and which resulted in certain firms being given an unfair advantage.

Widdicombe (1986) was not convinced that commercial and contractual matters "with members of the public are different in kind from cases involving other local authority dealings with the public", and they wanted a review of the exclusion (p221). The government does not take this view, arguing that ombudsmen are concerned with "the interaction between the executive arm of Government and the general public", and that actions "taken by public bodies in buying and selling goods and services are fundamentally different" (Government Response to Widdicombe 1988, p29). They maintain that there is no case for providing protection through the Local Ombudsman, as there are legal safeguards and remedies. They do, however, mention areas which will be kept under review, where the commercial aspect is almost a secondary function, for example, allocation of market stalls and where councils are using non-commercial considerations in tendering procedures.

The Local Ombudsman makes the point that some traders may be highly dependent on business from their local authority and that if that business is unfairly denied them, then their livelihood may be threatened. The Commission are seeking alteration of the law "to allow investigation of complaints about the way proposed contracts are allocated or withheld" (CLA Annual Report 1988/89, p54). In this respect, it is interesting to see that the courts are becoming involved in such matters. The Local Government Act 1988 places a duty on public authorities to give reasons for certain decisions relating to contracts. The Act imposes a duty on local authorities to exclude from contracts any consideration of matters which are non-commercial, and there is therefore a duty not to discriminate against a contractor by the introduction of political or irrelevant considerations (section 17). Where this section applies, the authority must give written reasons for a decision to exclude a contractor from an approved list; a decision not to invite tenders, or not to accept them; or a decision to terminate a contract (section 20).

In R. v. The London Borough of Enfield ex parte T.F. Unwin (Roydon) Ltd (1989) 46 Build LR 1, the contractor was suspended from Enfield's list of approved contractors, the only reasons being that there were "inquiries into the conduct" of the borough's staff. Unwin started proceedings for judicial review seeking orders of mandamus requiring reasons for the decision to suspend it from the lists of contractors, and an order of certiorari to quash the decision, arguing that there was a statutory duty to give reasons by virtue of the Local Government Act 1988. Enfield did not deny that it had failed to comply with the duty imposed by section 20, but said that there were "substantial and serious allegations of offences or irregularities in the relationship" between Enfield and Unwin, and that while the allegations were being investigated by the police it was not possible to provide further details to him.

The court accepted the dilemma of local authorities in cases such as these, and decided that the standard of fairness which a contractor was entitled to expect depended on all the circumstances. In this case, the fact that an investigation was underway did not deprive Unwin of the right to be told of the accusations and to be given a chance to answer before a decision was made. In the circumstances, Enfield were not justified in failing to give reasons for its decisions, and because of the prior relationship with the council, Unwin was entitled to a legitimate expectation of fair treatment. The courts are thus becoming involved in these areas whereas the Local Ombudsman is excluded, and cases such as this strengthens the need for an extension of jurisdiction to complaints about the method of awarding or withholding contracts.

Actions in connection with the investigation or prevention of crime or of civil or criminal proceedings in court

This particular exclusion is confusing, as local authorities have many powers where there is a criminal sanction attached, and thus a decision on whether to commence proceedings in such cases, or a failure to do so, could be construed as connected with crime. During

the Sheffield Study numerous files were examined where it was clear that the Local Ombudsman had been restrained from investigating complaints by this provision. To cite one example, there was a complaint about the unauthorised cutting of trees. The Local Ombudsman decided not to investigate on the basis that it was a criminal offence to lop trees in a conservation area unless the local authority was notified of the intention to do so. The letter to the complainant, rejecting the complaint, ran as follows:

"I cannot therefore investigate your complaint that the council failed to take action following unauthorised tree works by your neighbour since this would have involved a criminal prosecution".

This seems to be a strange interpretation, since it would lead to the exclusion of many, if not most, enforcement complaints. As apparently the Local Ombudsman can investigate the local authorities actions when they are deciding whether to serve an enforcement notice, but cannot investigate the decision not to take action in the magistrates' court the position is even more confusing. Indeed, it was admitted that this exclusion is not rigidly adhered to, because if it were very little would be within jurisdiction because criminal proceedings are often possible, even if remotely.

The government view concerning the commencement or conduct of criminal or civil proceedings before any court, is that administrative actions taken before court proceedings are within jurisdiction already, and there is no case for extending jurisdiction beyond this (Government Response to Widdicombe 1988, p29). In relation to actions taken in connection with the investigation or prevention of crime, the government accepts that this should be within the Local Ombudsman's jurisdiction, except in relation to police authorities (p29). This has been effected by Order in Council (the Local Government Administration (Matters Subject to Investigation) Order 1988, S.I. 1988 No.242), which amends Schedule 5 of the Local Government Act 1974. It enables the Local Ombudsman to investigate actions taken by



an authority (other than a police authority) in connection with the investigation or prevention of crime.

Investigation on the Local Ombudsman's initiative

The primary role of the Local Ombudsman, as responding to complaints from individuals, is emphasised by the fact that the ombudsmen are precluded from investigating complaints on their own initiative, where they have not received a complaint from an individual. Thus, for example, if they see a report in the media of child cruelty, or the abuse of the elderly, where a local authority is involved, in the absence of a complaint, they cannot investigate. Even if the "complainant" is deceased, or too inadequate to complain, no matter how much the Local Ombudsman may wish to investigate, and even if the local authority request an investigation, without an aggrieved member of the public bringing the complaint, there can be no investigation.

Despite the fact that most ombudsmen worldwide enjoy such a power (eg New Zealand, Australia, Denmark and Sweden all empower their ombudsmen to investigate on their own initiative) the local authority associations, the Representative Body and the Department of the Environment have always strongly opposed allowing such investigations.

Some feel that such a change would alter the nature of the system from being a citizens' defender, to being a general overseer of maladministration in local authorities. Against this, it could be argued that in New Zealand and Australia this power has been exercised sparingly, and one could probably expect the same patterns to emerge here, if there were such a power, especially given resource constraints. The Local Ombudsman believe that own-initiative investigations would only be done very rarely. (see Sheffield Report 1986, p34).

Where a local authority request an investigation, it is difficult to see the objection, provided the Local Ombudsman is willing and has the available resources. As was found during the Sheffield Study

fieldwork, local authorities often see the Local Ombudsman as a highly desirable way of resolving complaints which are found to be difficult or resistant.

Such a power could also be used to conduct ad hoc inquiries where the local authority agrees. Local authorities and interest groups report that they would value such an initiative and it would be in line with developments elsewhere. For example, since 1976 the French mediateur's jurisdiction has been extended to include complaints from small businesses and associations such as amenity and environmental groups (see Clark 1984, p.172). Sir Guy Powles has called for ombudsmen to be "general investigating authorities", a role which has become increasingly recognised by governments worldwide (Powles 1979).

The ombudsmen themselves have argued for the power to initiate investigations, arguing that, as the service exists to investigate possible injustice caused by maladministration, "it should not be hindered by the fact that a complainant is not readily forthcoming, perhaps because he or she is dead". They believe that there are cases, observed in the media, which appear "more significant and serious than some complaints properly referred to the ombudsmen by individuals" (CLA Annual Report 1985, Appendix 4, parag 20). Such a power may go some way to redressing the middle class bias among complainants. Justice (1980) for example found over 70% of complaints to the Local Ombudsman were made by non-manual households (p60). The Sheffield Study's limited survey revealed that 77% of complainants were owner occupiers.

Widdicombe (1986) recommended that the Local Ombudsman should have power to initiate investigations, provided that there was "good ground for concern", and that it was not used to conduct an investigation into the general procedures of an authority rather than an individual case "where there was reason to suppose that injustice had occurred" (p222)

The government view is that such a power would be a departure from the principle of redressing personal injustices on the complaint of aggrieved persons, and as such, the Local Ombudsman could "lose goodwill and co-operation by acting, or appearing to act, as a general purpose watchdog". They therefore refused to support it (Government Response to Widdicombe 1988, p30)

The Commission itself has attempted some improvement here, to assist those who may be unable to bring, or intimidated at the thought of bringing a complaint. Under the Local Government Act 1974, section 27(2), the Local Ombudsman has power to investigate complaints made on behalf of a person who is unable or has difficulty in making a complaint. The Commission has, therefore, written to voluntary organisations asking them to refer complaints to them on behalf of aggrieved persons, where an issue has not been resolved satisfactorily within the local authority (see CLA Annual Report 1988/89, p58). Although this initiative is specifically designed to make social services departments more responsible to their clients, it does represent some attempt to alleviate the problems caused by the prohibition on investigation on the ombudsman's own initiative. The number of complaints received in this way has not been great, but the Local Ombudsman believes that the letter may have had the effect of encouraging voluntary organisations to recommend the service to clients, who have then complained direct (CLA Annual Report 1989/90, p12).

### Remedies

In order to judge the effectiveness of a system of dispute resolution, some thought must be given to the remedies afforded by the system. This brings up the vexed question of the enforcement of the Local Ombudsman's recommendations. It does happen that not every local authority is prepared to accept the decision of the Local Ombudsman as binding on them. The Select Committee on the Parliamentary Commissioner noted that 6% of recommendations have been without effect, and 19% of local authorities which have had an adverse report

at one time or another have been prepared to ignore the Local Ombudsman's recommendations (Select Committee 1986, para 8). There have been 150 cases in total since the Local Ombudsman was set up where the local authority has not provided a satisfactory remedy after a finding of maladministration and injustice, which represents about 5% of all cases of maladministration and injustice (Government Response to Widdicombe 1988, p28 para 6.21). There is no parallel in this respect with other ombudsman systems, none of which, except Northern Ireland, has a statutory power of enforcement.

The majority of local authorities have a good record, and examples were encountered on fieldwork during the Sheffield Study of local authorities seeing an adverse report as a warning that something was wrong, and doing their best to sort out the problem. The following extract from a letter, sent by the chief executive of an authority to a successful complainant, exemplifies the correct attitude of a good authority to a finding of maladministration and injustice.

"I send the Council's apologies for the maladministration involved in this case, and I add my own apologies for the fact that we .... have given you service which fell short of that to which you are entitled."

But, of course, not all authorities are so accommodating, and indeed, some are positively obstructive. Indeed the figures alone, serious though they are, play down the seriousness of the problem. During the course of the Sheffield Study research it became evident that a number of the Local Ombudsman's findings are in fact negotiated with the local authority, and it was felt that there was a tendency to dilute the finding when the local authority was likely to prove hostile. The ombudsman showed a tendency to reach a finding that was acceptable to the authority and there were instances where a draft second report was sent to the local authority, only for it to be withdrawn when it became clear that it would find a poor reception. Indeed, some Local Ombudsmen have avoided making second reports at all on a matter of

principle, indicating that some local authorities have learnt how to handle the ombudsman which is seen as less of a threat than formerly.

Non-compliance is therefore a serious problem. The only sanction for the Local Ombudsman if a report is not accepted is to issue a second report, which in turn can be ignored. This is in contrast to the vast number of complainants who are obliged to accept findings which go against them.

Is the solution to the problem therefore, to adopt the Northern Ireland system of enforcement in the county courts? The Select Committee (1986) decided not to recommend this (para 24, 25), but recommended that offending authorities be brought before them to explain their position. Widdicombe (1986) came closer to recommending enforcement on the Northern Ireland model, recommending that "consideration be given to the application of similar rules" for the Local Ombudsman here (p220)

The conclusion from the Sheffield Study was that there should be no enforcement through the courts. As has been said before, many recommendations are negotiated, and much is achieved on this basis of voluntary co-operation. It was felt that enforcement would imperil this relationship and make local authorities defensive. The current Local Ombudsmen believe that the present working practice gives them an opportunity to see what the local authority will offer, sometimes telephoning the chief executive to ask what kind of recommendation is likely to be acceptable to the authority. Watchman (1985) too found occasions where a refusal to follow the Local Ombudsman's recommendation was the result of a breakdown in the working relationship between authorities and the Local Ombudsman's office. If there were judicial enforcement many local authorities may want procedures to become more judicial, which would destroy the value of the system.

The government rightly pointed out that the "failures", although small in number, undermine the credibility of the Local Ombudsman system as

a whole (Government Response to Widdicombe 1988, para 6.21), and that steps should be taken to improve this (para 6.24). However, they concluded, as did the Sheffield Report, that the "independent, informal, flexible investigation of individual complaints without powers of compulsion .... remain appropriate" (para 6.20), because local authorities may be less willing to co-operate, and investigations may become "increasingly formalised, lengthy, legalistic and costly" (para 6.22). The government has decided against enforcement, nor do they like the Select Committee (1986) proposal that the Select Committee have a role in calling recalcitrant councils into account, because "local government .... do not see themselves as accountable to Parliament - though recognising that they operate within a statutory framework" (para 6.23). The remedy proposed is "more local pressure" (para 6.25) and some method of ensuring that adverse reports are fully and properly considered by councils, which should give a "full and public explanation" if they decide not to comply with the recommendation.

In order to ensure this the Local Government and Housing Act 1989 provides that decisions not to comply with further reports should be taken by the council as a whole (section 28); that there should be a set response time of 3 months for adverse reports; that local authorities be under a duty to inform the Local Ombudsman of the steps taken to prevent similar injustice recurring; that authorities should be required to publish in local newspapers a statement from the Local Ombudsman and their reasons for not remedying the injustice, in cases of non-compliance (section 26). All this puts councils under a greater obligation to state publicly why they do not intend to implement a remedy required by the Local Ombudsman. This is an attempt to make the fact of non-compliance a matter of public debate, and it may have the effect of making the system more vigorous, while at the same time ensuring that proceedings remain voluntary and informal. If this proves ineffective, alternative methods may have to be considered, and the Commission are urging that if voluntary compliance continues to be unsuccessful, judicial enforcement of remedies should be introduced (CLA Annual Report 1988/89, p54).

### Conclusion

In conclusion, the Sheffield Report and this study endorses wholeheartedly the Government's Response to Widdicombe (1988), that the Local Ombudsman service "has in practice proved a positive force for good, both by redressing individual grievances and by providing a spur to more responsive, efficient and fairer local administration" (para 6.18).

Any problems or drawbacks to the Local Ombudsman as a method of handling the individual trouble case (eg lack of awareness, jurisdictional limits, lack of enforcement) have been discussed throughout the chapter. However, no matter how good the system is, or may become, it should be seen as a last resort method, with the emphasis on local authorities settling grievances within authorities themselves. Before looking at the extent to which they do so, I want to look more generally at the role the courts can play in resolving such grievances.

## CHAPTER 6 THE COURTS

### Introduction

The use of the courts as a method for solving individual trouble cases seems obvious. Our legal system is based on such cases, and indeed, as Birkinshaw (1985) has pointed out, at one time grievance resolution would have been thought of by lawyers purely in terms of resolution by the courts (p2). The fact that this is an unduly restrictive way of looking at grievance redress, especially when looking at the state's involvement in remedying grievances has been discussed in Chapter 1 (See also Ganz 1972).

However, despite these arguments, there are a number of areas of dispute where the courts provide an appropriate remedy. It is proposed in this chapter to outline the legal remedies which are available for members of the public to challenge a local authority's decision or action and to look at the limitations of these remedies. It is also the intention to examine whether the possibility of an external appeal, either to the courts, tribunals, or a minister, affects the way a decision is made within the authority.

Legal remedies which are available include ordinary actions in contract and tort, which can be brought in the County Court or High Court, and in that respect local authorities are subject to the control of the courts in much the same way as any other kind of corporate body or natural person. In addition to this, there are provisions in various statutes for an appeal to those aggrieved by local authority decisions to the County Court, High Court, Magistrates Court, Crown Court, a tribunal or a minister. Moreover, the decisions of local authorities are subject to judicial review.

### Statutory Appeal Mechanisms

So far as statutory appeals are concerned, these, of course, have limited application, specific to certain areas. They include such



matters as appeals to the Secretary of State on the merits of planning decisions, and appeals to the County Courts on various housing matters. Some statutes provide for a review of the merits of a decision, and others for an appeal against their legality. For example, there is a right of appeal to the Magistrates Court when a local authority serves an enforcement notice for breach of the building regulations (Building Act 1984, section 40). The Town and Country Planning Act 1971 provides a right of appeal against a notice served by the local planning authority ordering a landowner to remedy the condition of any waste land (section 105), and the Public Health Act 1961 provides a right of appeal to the Magistrates Court where plans are rejected because of building regulations.

Magistrates Courts also hear appeals under the Foster Children Act 1980, sections 8-10, in relation to decisions by local authorities to prohibit the taking of a child if the authority is of the opinion that the person or premises are unsuitable or that the arrangement would be detrimental to the child. A person aggrieved by this prohibition, or by any requirement which an authority may make, may appeal to the juvenile court, which, if it allows the appeal, may vary a requirement, or substitute a requirement for a prohibition.

There are statutory provisions for appeals to the Secretary of State for the Environment in the case of the making up of private streets or apportioning the cost (Highways Act 1980 sections 205-218). Appeals can also be made to the minister in respect of an authority's decision regarding an application for a disposal licence for depositing waste under the Control of Pollution Act 1974.

The Secretary of State also plays an important role in reviewing decisions of planning authorities in relation to development control. Under Section 36 of the Town and Country Planning Act 1971, an applicant for planning permission who receives an adverse decision (that is, a refusal, or permission subject to unwelcome conditions) can appeal to the Secretary of State. There are similar rights of appeal against refusals for listed building consents (Schedule 11,

para 8) and against enforcement notices (section 97). The decision of the Secretary of State on appeal may, in certain circumstances, be challenged in the High Court (sections 242, 245)

In the sphere of education, in relation to special educational needs, there is provision in the Education Act 1981 for parents to appeal to the Secretary of State if the LEA does not make a "statement" in relation to a child's special educational needs. The Minister can then compel the LEA to reconsider the decision. There is a right of appeal against the statement itself, to a special committee of the local authority, and then a further appeal to the Secretary of State.

These are just some examples of the statutory appeal mechanisms which are available, and during the course of the Sheffield Study their use and popularity were explored. The Sheffield Study survey asked a number of questions about these mechanisms. The majority of respondents to the survey considered that it was always preferable to try to resolve complaints by members of the public within the authority, rather than rely on the statutory appeal procedures (social services 92%, education 94% and environmental health 98%). Despite this the advantages of having statutory procedures were also recognised. Thus, 68% of social services departments, 58% of education departments and 70% of housing departments thought that there advantages in having statutory procedures for resolving complaints, rather than having the complaint settled within the authority. The main advantages noted by respondents for statutory procedures were that justice could be seen to be done, or that it accorded more with ideas of natural justice.

Planning departments did not show this enthusiasm for statutory procedures, with only 17% thinking that there were advantages, compared to 77% who thought that there were not, the main reasons being that the Local Ombudsman was a better procedure, being cheaper and quicker, and that statutory procedures tended to harden attitudes. It may be that the majority of respondents in planning departments misinterpreted this question, and did not appreciate that the survey

was asking about the advantages of, for example, appeals to the Secretary of State in development control matters. Indeed, during the Sheffield Study fieldwork, planning officers in some authorities spoke of the particular use of such appeal mechanisms when a new council was elected. When new members were elected, initially, a large number of planning applications were rejected, as members knew they could be challenged on appeal, and in this way members could obtain an independent assessment on their decision. When members became more experienced they were prepared to take responsibility for their decisions, rather than, in effect, entrusting it to the Secretary of State.

In the survey the majority of planning officers (70%) thought that the statutory appeal procedures were adequate, and few (23%) thought that there was any need to improve these procedures in order to reduce the number of appeals to the Secretary of State. The "improvements" suggested by this minority were either the removal or restriction of the right of appeal in certain circumstances, and the introduction of fees for those who exercised their right of appeal.

More respondents in social services departments found statutory procedures useful (54%), than those from the other departments. The use of the Magistrates Court in care orders was seen as particularly useful and valuable by officers interviewed during the Sheffield Study fieldwork. Although court procedures were seen as time-consuming and costly, officers recognised that they allowed for another judgement in a case, and to some extent let the authority "off the hook". The possibility of independent review was often mentioned by those interviewed.

In the Sheffield Study survey, 75% (28) of the respondents saw the courts as the preferred body of appeal in statutory matters, the reasons being their independence and impartiality. One respondent spoke of "a need for appeal to a body not directly involved in decision making" in matters of such a sensitive nature, and another thought that "an appeal to an impartial body and the involvement of

people outside the department reduces the likelihood of mistakes being covered up". Despite the fact that few (24%) respondents to the survey wanted statutory appeal procedures extended to other areas of work in social services departments, a number of officers interviewed expressed concern about the procedure which allowed an authority to assume parental rights over children in voluntary care by resolution, rather than court order. This practice will no longer be allowed by virtue of the Children Act 1989, and, from the Sheffield Study fieldwork, it appeared that it was not used routinely.

In housing departments, only 22% of respondents to the Sheffield Study survey found particular statutory procedures useful, and even less (7%) wanted an extension of such procedures. When asked about a particular statutory procedure, that of housing benefit review panels, the majority (64%) were satisfied with its operation, although again, few (24%) wanted it extending to other areas of housing management. The reason for the satisfaction with the scheme appeared to be that it was little used and little known, and therefore had not proved to be too much of a burden to the departments. Indeed, many authorities visited during the fieldwork period of the Sheffield Study had adopted informal methods of handling housing benefit cases.

Similarly, with education departments only 3 (9%) respondents wanted an extension of statutory appeal procedures to other areas of work within their department. Furthermore, although in general 55% were satisfied with the procedures for appeals concerning the allocation of pupils to schools, and special needs (Education Acts 1980, 1981), only 6 (18%) thought that such mechanisms could be usefully extended to other areas of work in education departments. The reasons given were that the procedures were bureaucratic and time consuming; that such a procedure could circumvent the authority's declared policy, and that the system worked unfairly because decisions were inconsistent, and that schools could be overcrowded as a result of the appeal committee's decision.

Hill (1976) points out the problems of using tribunals to adjudicate in areas where the problem is one of allocation in situations of demand exceeding supply. In order to adjudicate, any individual claim would have to be weighed against all competing claims, in order for a fair decision to be reached (p159). This, in essence, appeared to be the reason for the ambivalent attitude towards these appeal panels, expressed by officers in education departments, during the Sheffield Study fieldwork. Despite this, the use of tribunals in this area may limit some abuses, such as the allocation decision not being taken fairly.

Another problem noted with the appeal mechanisms was that the statutory machinery was too adversarial, and that a more conciliatory approach was desirable. As in housing, some education departments had introduced an informal system, in which attempts were made to settle the matter without the need for the statutory procedure. These were much more conciliatory in their operation and involved discussions with parents of the reasons why it was not possible to accommodate their wishes. Only if parents were not satisfied would the case go to the appeals committee. The success of such schemes was illustrated by the fact that in one authority, about 100 parents each year expressed dissatisfaction with the school allocation, but after negotiation only about 30 pursued the case to the appeal tribunal.

Authorities emphasised that appeal arrangements would only be implemented when all other means of settlement had been exhausted, and it did seem that the statutory procedure was viewed as a last resort. If this is so, this adds weight to the argument for such statutory mechanisms, as it encourages informal avenues of appeal where none before existed, and gives more opportunity for a negotiated settlement.

A similar practice was found by Birkinshaw (1985) in relation to licensing matters. Where there were statutory appeal mechanisms, he found that informal meetings with the applicants were used as a matter of course. Even quite detailed statutory procedures were often

supplemented by informal negotiation, and his conclusion was that where statutory provisions are introduced, this tends to bring in its wake supplementary safeguards and devices (p71). Nothing in the Sheffield Study would detract from this view. Again, in relation to special education needs, some authorities used case conferences, in an attempt to settle disputes informally, rather than risk an appeal by the parents to the Secretary of State.

The questions in the Sheffield Study questionnaires referring to statutory appeal mechanisms did not differentiate between those with a right of appeal to the courts and those where the appeal was to the Minister. When asked specifically about these different avenues of appeal, most departmental responses favoured courts rather than ministers. In social services departments, for example, 75% thought that there were advantages in having statutory procedures where the appeal was to the courts, whereas only 27% saw the advantages of an appeal to the minister. In housing departments the figures were 53% and 25% respectively, and in environmental health departments, while 40% were prepared to say that there were advantages in appealing to a minister, where the courts were concerned, 71% saw advantages in the use of the magistrates court and 63% the county court. Education departments were out of line with this general trend, with a minority (32%) agreeing that there were particular advantages in appeals to the courts, compared to the minister (54%).

While complainants may not be reticent about using statutory procedures where the appeal is to a minister, or other tribunal (especially in planning cases) evidence shows that people are more reluctant to use the courts. In his detailed study of the housing department in Sheffield, Leak (1986) found that legal remedies were rarely sought against the council, but were rather used by the council (p13). The few housing cases there had been were heard in the County Courts. Leak believes that this is a function of the lack of readily available legal facilities, as, until 1985, Sheffield had no law centre. In this respect, Sheffield is compared to an inner London

borough where there were numerous cases against the council under section 99 of the Public Health Act 1936.

Another reason for the reluctance to pursue legal redress was that in Sheffield the ideology of public interest had restricted the growth of individual rights, and hampered the perception of any rights at all. Councillors admitted that they wanted to discourage legal action in repairs cases (Leak 1986, p318) because this would disguise genuine and urgent cases, or may lead to leapfrogging the queue. A campaign by the Liberals in 1978 to encourage tenants to take legal action where repairs had been delayed had been very much resented by Labour councillors. This belief, that enforceable individual rights should be subordinated to an administrative queue, was often encountered during fieldwork in the Sheffield Study, in particular from councillors and officers in housing departments.

Although there are obligations on local authorities which can be enforced in the County Court, these are usually in relation to the authority's obligations as landlord. One exception to this is the specific remedy given by the Housing Act 1985 in right-to-buy cases. In such cases, once an offer has been accepted, and details of a mortgage agreed, the property should be conveyed as soon as reasonably practicable, and if it is not, an injunction can be obtained from the County Court, requiring the council to complete the transaction. This was an attempt to prevent local authorities deliberately delaying in these matters, but it can, of course, be used where lack of resources is the cause of the problem.

This remedy does not prevent delay in the pre-offer stage, nor give an effective remedy where delay occurs before the offer is accepted. In such cases, those aggrieved would make a complaint to the Local Ombudsman on the grounds of maladministration, such cases making up 22% of housing complaints to the ombudsman last year (CLA Annual Report 1988/89, p11). Even where maladministration was found, however, it was difficult to quantify the injustice in terms of financial loss. The Housing Act 1988 introduces a procedure to deal with such delays, so

that the purchase price will be offset by rent paid during the delay period, and the discount period (within which a person cannot sell without repaying the council) will be amended accordingly. The Local Ombusman believes that this should reduce the number of complaints (CLA Annual Report 1988/89, p19), and this provision indicates one of the ways a legal remedy results in an improvement in administration much more effectively than the intervention of the Local Ombusman.

Authorities' obligations in relation to the homeless are more difficult to enforce. Because of the lack of a statutory right to redress, most cases in this area are decided by way of judicial review, a procedure which will be dealt with later in the chapter. It is worth noting here, however, that such cases often concern the definitions of words used in the act. For example, two recent cases were concerned with the definition of "intentionally homeless". (See R.v. Mole Valley District Council ex parte Burton (1988); R.v. Hillingdon Borough Council ex parte Tims (1988) 20 H.L.R. 305). In these cases, a different interpretation by the court would have been the only method of obtaining redress.

This lack of an effective method of challenging a decision on homelessness is a drawback of the legislation (see Civil Justice Review 1988, para 750), and as the government are reluctant to see homelessness decisions appealed to the county courts on the merits, a new code of guidance is expected to call for local authorities to establish internal appeals procedures culminating in a hearing by councillors (See Legal Action, June 1990, p16). Such appeal panels would be subject to review by the courts. (See R.v. Sheffield City Council ex parte Burgar (1990) QBD). This would be an improvement, and there can be little doubt that such an appeal mechanism, or even better, a challenge in the county court, would be a more effective way of dealing with the problem than judicial review.



Damages for Failure to Perform Statutory Duties

Local authorities have a number of duties imposed by statute, and a power to perform a number of functions. If they do not perform these duties or exercise these functions, citizens may have some redress through the courts. However, it is not possible to state concisely the principles on which an action for damages can be sustained against a local authority for a breach of a statutory duty or a failure to exercise a statutory power. It is often claimed that an action for damages will not lie against an authority for failure to do an act which ought to have been done, and case law in this area tends to indicate the circumstances in which an action will not lie (see Cross and Bailey 1986, p195).

In order to establish an authority's liability, it is necessary to know whether the statute confers a power or imposes a duty on the authority. Then the statute as a whole has to be examined to see whether a remedy for the injury complained of is prescribed. The general rule is that the provision of a specific remedy excludes a common law action in tort (Hesketh v. Birmingham Corporation (1924) 1 K.B. 260). If there is a duty and no special remedy is provided, then it must be ascertained whether the duty is owed to the community at large or to persons of whom the plaintiff is one. Only if the duty is owed to individuals, of whom the plaintiff is one, can the action lie (Read v. Croydon Corporation (1938) 4 All ER 631). Only in these restricted circumstances can the aggrieved person sue for damages.

For this reason, a failure of a highway authority to perform the duties of repair and maintenance has been held not to give rise to liability to pay damages to persons injured as a result. However, section 1 of the Highways (Miscellaneous Provisions) Act 1961 changed this, and an action can lie subject to the defence that the authority has taken such care as is reasonable in the circumstances to secure that the part of the highway to which the action relates was not dangerous for traffic.

There is no liability in general for failure to exercise discretionary powers (see Cross and Bailey 1986, p200), although where a power to confer a fresh benefit is incompetently exercised, an authority will be liable for "fresh damage" which would not have occurred had the power not been exercised at all. There is no liability for merely failing to confer the benefit in question. The authority's intervention must, in some respect, make the situation worse (East Suffolk Rivers Catchment Board v. Kent (1941) A.C. 74). Local authorities have been held to owe a duty to protect owners and occupiers of buildings from losses inflicted on them by builders as a result of defective building work (see Dutton v. Bognor Regis U.D.C (1972) 1 All ER. 462; Anns v. Merton L.B.C. (1977) 2 All ER. 492). However, Murphy v. Brentwood District Council (1990) 3 WLR 414 has overruled Dutton and departed from Anns, and established that purely economic losses caused by failure to take reasonable care in carrying out a statutory power or duty, are not recoverable. No opinion was expressed in relation to personal injury caused by such failure.

This does not necessarily mean that actions against local authorities are unproblematic. In Dear v. Newham L.B.C. (1988) 20 H.L.R. 348, the authority was sued under the Public Health Act 1936 section 72(2) for failing to remove rubbish, as a result of which a child was injured. Although there is a statutory duty to remove "house refuse", the rubbish in question was held to be not capable of falling within the definition of "house refuse", and accordingly the authority was under no duty to remove it, even on notice.

The courts have also placed some limitation on using breach of statutory duty where they consider another remedy more appropriate. So, in G. v. Hounslow Borough Council (1986) 86 LGR 186, a minor, subject to a care and protection order, was transferred from a community home to a guest house. Action was brought against the authority for damages in the county court on the grounds that they were in breach of their statutory duty by making a minor homeless. The court said that this was an improper remedy, the proper remedy being judicial review.

The courts are not prepared to inquire too closely into how an authority performs its duty. For example, in one case, the complaint was that the authority had failed in its duty to consider a report before a school was closed, as required by the act. The court said that the fact that the education committee members had a copy of the report was sufficient to discharge this duty (Nichol and Others. v. Gateshead Metropolitan Borough Council (1987) LGR 435).

### Judicial Review

Although, generally, the courts are reluctant to intervene in the exercise of discretionary powers by administrative bodies, such bodies are obliged to keep within the framework of their enabling legislation, and to act in accordance with the principles of natural justice. The actions of local authorities are thus subject to review by the courts, and this procedure has a much wider application than statutory appeal mechanisms. The application under Order 53 of the Rules of the Supreme Court (Supreme Court Act 1981, section 31) is made to review a decision or action of the local authority, and it is therefore used to challenge an authority's application of the rules. Judicial review can be used where other remedies are available, and an applicant can seek review of any decision or action on the grounds that it is illegal. It is discretionary, both in the decision to consider a case or not, and in relation to the remedies granted.

It can be used where a local authority has acted outside its statutory powers; where it has acted illegally in that irrelevant matters have been taken into account; relevant matters have not been taken into account; the decision is so unreasonable that no reasonable authority would ever have made it; the authority acted in bad faith, or was influenced by malice or an improper motive (Associated Provincial Picture House Limited. v. Wednesbury Corporation (1948) 1 K.B. 223). Judicial review can also be used for procedural impropriety, or where an authority has failed to comply with its statutory duty. It cannot, however, be used to question the merits of a decision, nor can it be

used as a court of appeal, as was clearly set out in the case of Luby. v. Newcastle-under-Lyme Corporation (1964) 2 Q.B.D. 64:

"The court's control over the exercise by a local authority of a discretion conferred upon it by Parliament is limited to ensuring that the local authority has acted within the powers conferred. It is not for the court to substitute its own view of what is a desirable policy in relation to the subject-matter of the discretion so conferred. It is only if it is exercised in a manner which no reasonable man could consider justifiable that the court is entitled to interfere" (per Diplock L.J. at p72)

In the GCHQ case (Council of Civil Service Unions. v. Minister for the Civil Service (1984) 3 All ER 935), the heads of review were confirmed to be illegality, irrationality and procedural impropriety. Thus administrative action is subject to control by judicial review where the decision-making authority has been guilty of an error of law; where it has acted so unreasonably that no reasonable authority would have made the decision; and where the authority has failed in its duty to act fairly. Under this third head is included a decision concerning a benefit or advantage which a person "has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational ground for withdrawing it on which he has been given an opportunity to comment" (per Diplock L.J. at p949). So, although the courts are not concerned about the fairness of particular policies, they are concerned that legitimate expectations are fulfilled.

All the discretionary decision making of local authorities is potentially reviewable in accordance with these principles. Thus, for example, in a case concerning child care, the court held that in deciding whether or not to allow a child home on trial where there were unsubstantiated allegations against the parents, the local authority had to have a fair procedure which gave the parents the chance to make representations and call evidence (R. v. Hertfordshire

County Council, ex parte B [1987] 1 FLR 239). Similarly, in R.v.Bolton M.B.C. ex parte B ([1985] FLR 342), the court insisted that the local authority complied with the objectives of the Child Care Act 1980, section 12(a)-(e) in allowing parental challenge to the termination of access.

The High Court was also prepared to intervene in the case of a local authority's entry of names of alleged child abusers in the Child Abuse Register, dismissing the authority's claim that this was a purely clerical act internal to the council's administrative procedures. It was decided that local authorities are not free to exercise arbitrary control over the entry of names of alleged abusers with total immunity from supervision by the courts. Such immunity would erode citizens' rights, and there can be intervention by the courts if there is a risk of injustice to an adult through the unquestioning acceptance of a child's accusation (R.v.Norfolk County Council, ex parte M (1989) 2 All ER 359).

However this decision may be a result of the particular facts of that case, where the alleged abuser was blacklisted as a result of his name being entered on the register, which meant that he could no longer do contract work for the local authority. Other applications in this area have not received such a favourable response. Thus, in a case where a parent was not permitted to attend a case conference, following which the children of that parent were entered on the "At risk" register, the court held that the parent had not lost a right nor been denied a legitimate expectation thereby, and the barring from the meeting was not reviewable. The decision was not unfair or contrary to natural justice and judicial review did not lie (R.v.Harrow London Borough Council ex parte P (1988) LGR 41).

What is of concern in this case is that the court also said that recourse to judicial review in respect of a decision to place the name of a child on a child abuse register ought to be rare, as all concerned in "this difficult and delicate area" should be allowed to perform their task without looking over their shoulder all the time

for the possible intervention of the court. The court concluded that entry of the name of an abuser is not a finding of fact, even less one of guilt. The problems concerning attendance at case conferences will be taken up in Chapter 8, but it is of concern that the courts are reluctant to intervene in this area, particularly as there is no statutory right of appeal.

Judicial review has been used in the case of foster parents whose names have been removed from the local authority's list of approved foster parents. Although there is no statutory provision for the authority maintaining a list of approved foster parents, the court decided that people whose names are removed from the list are entitled to know why and to answer any allegations known about them, and that this right can be enforced by judicial review (R.v.Wandsworth London Borough Council ex parte P (1988) LGR 371). This case involved an allegation of sexual abuse against the foster parents, and although the court said that the authority must act fairly, provided the rules of fairness are complied with, the decision as to whether there is a risk or not is to be taken by the local authority. The foster parents have no redress in the absence of a breach of natural justice, as the court considered that because it is important that the local authority should have confidence in foster parents, their interests are subordinated to the interests of the children.

These are some examples of the problems faced by those aggrieved by a local authority's decision in what is admitted to be a problematic area of local authority work. Some of these issues will be taken up in the chapter on social services departments (Chapter 8), but the cases illustrate the reluctance of the courts to intervene, and thus the limitations of this form of redress.

Another problem with judicial review is that the applicant must first obtain leave to bring the application, and this will only be granted if the applicant can show a prima facie case, and has "sufficient interest" in the matter. The case can only proceed if leave is obtained. What is meant by "sufficient interest" is not laid down in

the legislation or Order 53, but it is clear that a ratepayer will have sufficient interest to challenge decisions about expenditure (see R.v.GLC, ex parte Blackburn (1976) 1 WLR 559; IRC.v.National Federation of Self Employed and Small Businesses Limited (1980) QBD 407). It is not clear however whether an elector would have sufficient interest in these cases, nor whether a ratepayer or an elector would have sufficient interest in a case which not involve expenditure.

It is with good reason, therefore, that it has been said that the courts in general are "fraught with technical danger and uncertainty", and that judicial review in particular is a "notoriously opaque area of the law" (Birkinshaw 1985, p2). In order to remove some of this uncertainty Widdicombe (1986) recommended that any elector or ratepayer should be deemed to have sufficient interest to seek judicial review of an action taken by his/her local authority (p224). The government's response, however, was that the present law is not defective, and that the present rules ought to be able to ensure that anyone who legitimately wants to question a local authority's decision would be able to do so. To remove the "sufficient interest" requirement would be to institute a "busybody's charter" (Government Response to Widdicombe 1988, p371).

Another problem with judicial review, as with legal actions in general, is that legal costs can be very expensive. The courts have discretion in awarding costs, but they are normally awarded to the successful litigant. Since a short High Court action can cost more than £50,000 (Widdicombe 1986, p212), and since the legal aid limits mean that, in effect, only the poor will be aided in this way, the expense can act as a powerful deterrent against those wishing to challenge a local authority. As Birkinshaw (1985) expresses it: "The state is its own financier, at our expense" (p175). The state has both resources and expertise, in contrast to the ordinary citizen, to whom litigation, besides being expensive, can be a daunting experience. Hill (1975), too, points out that just about the last thing that would occur to an isolated aggrieved citizen is to try to take a case to the high court (p169).

In view of these problems, Widdicombe (1986) recommended that the Local Ombudsman should have the power to assist individuals wishing to challenge a decision by a local authority, where there were implications for an authority's services at large or, on procedural issues, for its conduct of business generally; where there were important issues of principle where clarification of the law would be desirable; or where there was evidence of persistent breaches of the law (p228). The government's response to this suggestion was that, as there is provision for legal aid, it would not be appropriate to provide special assistance over and above that which was available through legal aid for those bringing proceedings against local authorities (Government Response to Widdicombe 1988, p37). However, the evidence does not show that the procedure is widely used. Widdicombe (1986) found that in 1985, only 217 cases for judicial review were brought against local authorities, 80% of which were brought by private individuals. Leak (1986) found that in Sheffield there had not been a single judicial review case in the 10 years preceding his research (p317).

#### Collective Actions

There have been attempts to overcome these problems in order to use the law as a device for protecting rights or interests, by use of the Test Case strategy (see Prosser 1983). However, a drawback of this strategy is that legal aid is not usually granted for collective actions, because such actions often fail the test for granting legal aid; that is, that a reasonable person, given sufficient means, would finance the litigation. Given the small amount of money which is usually at stake in such cases, it would not be considered appropriate to grant legal aid (See Royal Commission on Legal Services 1979, pp106, 140). The government response to the Royal Commission emphasised the inappropriateness of using legal aid for collective action: "legal aid from public funds should be available in appropriate cases for individuals who have inadequate resources" (Government Response to the Royal Commission 1983, p3 para 3).



Another drawback to this strategy is that judges tend to respond to the interests of those owning private property, or to the claims of "public interest" as identified by public officials. They do not show themselves as being particularly sympathetic to community claims or group interests, which cannot be easily attached to a "legal right" (McAuslan 1980, chapter 9).

This can be contrasted to the US experience where the law is used much more as a method of mobilising political resources. Here the rules on locus standi are much more liberal, and the use of class actions have developed, where litigants can pursue a claim on behalf of others with similar claims. If the claim is successful, damages (or other remedies) can be awarded to all the members. If the litigant is not successful, and loses his/her individual claim, the court can deal with the class issue independently (see Chayes 1976). Indeed, it has been said that "Lawsuits involving the validity of governmental action or inaction, rather than asserting private rights, have come to dominate Federal Civil Dockets" (Chayes 1982, p9).

However, this liberalisation of locus standi has suffered setbacks in recent years, with more restrictive interpretations of "standing". (see Sierra Club v. Morton 405 US 727 [1972]; Valley Forge Christian College v. Americans United for Separation of Church and State 102 S Ct 752 [1982]), and class actions have been restricted in school segregation cases, civil rights cases and cases involving rights of a political or social nature (see Chayes 1982).

There has also been some retrenchment by the judges in respect of judicial intervention in the provision of remedies against public bodies (see Lewis and Harden 1982). Despite this retrenchment, the US courts are much further ahead of the English courts, because of the individualistic nature of the English law system, and its philosophy of the protection of property interests.

The Courts as Quality Controllers

Judicial review has been used to control public expenditure by local authorities on the basis that they are acting ultra vires if they are in breach of a fiduciary duty owed to ratepayers. This was the basis of the Fares Fair case (Bromley.v.GLC(1982)1 All ER 129), where Bromley challenged the GLC's policy of reducing London Transport's fares by 25%. The House of Lords decided that such a policy would only be intra vires if it aimed, as far as practicable, at ensuring that the fare revenue covered costs. This was based on an earlier case when it was held that the common law fiduciary duty required local authorities to run transport undertakings on business lines (Prescott.v.Birmingham Corporation(1955) Ch 210), rather than using the usual policy review test; that is, that the authority had acted in a way no reasonable authority could have acted.

The House of Lords rejected the GLC defence that it was elected on a mandate to introduce a 25% fares cut, the fact of democratic election itself not being sufficient to legitimate its actions. Some degree of rationality is required, and authorities are not to fetter their exercise of discretion by self-imposed policy rules (see British Oxygen Corporation.v.Board of Trade (1972) AC 610).

Harden and Lewis(1988) point out the implications of this proposition (p208). If the courts are to insist on the rationality of policy-making, and if the courts are to adequately supervise this, "administrative law needs to be considerably developed in a procedural direction" (p208). This must involve some change in the area of giving reasons for decisions, as there is at present no general duty to do so. It has been suggested that, if a prima facie case of abuse of discretion can be made out, then, in the absence of a statement of reasons for a decision by a minister, a court would be entitled to assume that no good reason existed. (Padfield.v.Minister of Agriculture, Fisheries and Food (1968) AC 997). But the problem with this is that "the burden of demonstrating a wrongful exercise of discretion must rest on him who asserts it" (Lord Justice Oliver in

the Bromley case p143), and if there are no reasons given, it is difficult ever to establish a prima facie case.

If there were a change in this direction there would have to be some tightening up of procedures within local government. If the decisions of authorities are to be scrutinised by the courts to see if they are rational, then reasons for decisions will have to be given as a matter of course. Local government has a long way to go in this respect. For example, the Sheffield Study found that the giving of written reasons was by no means universal. Housing departments proved to be the best in this respect, with 62% of respondents claiming to give written reasons for decisions routinely, and a further 30% giving them if requested, where there was no statutory requirement to do so. In education departments, 54% gave written reasons routinely, and 39% if requested. But only 35% of social services departments gave reasons for decisions routinely with a further 57% giving reasons if requested. It is interesting to see the way the Local Ombudsman is thinking in this area. In one case (88/A/2329) it was declared that good administration "requires that reasons are given" for decisions, and that a proper note should be made of them. It will be interesting to see if the courts develop on the same lines.

The British system can be contrasted with "hybrid rule-making" decisions in the American federal courts, where there is a general duty on the federal agencies to demonstrate to the courts that a rational process of decision-making took place with adequate opportunities for participation. The agency is responsible for designing the procedures, with the courts acting as quality control mechanisms to test the adequacy of the procedures adopted rather than the substantive rationality of the decision (see Harden and Lewis 1988, p209).

In this country, judicial review is a device which can be used by the courts "as a quality control mechanism over politicians, bureaucrats" (Birkinshaw 1986, p3), but it is in reality "a largely ex post facto one" (p4) with no significant impact before decisions are made. The

courts have little impact on ideals such as fairness, impartiality or legitimacy, and have been slow to move towards overseeing the adequacy of procedures. Apart from enforcing express statutory consultation requirements as mandatory, breach of which will make the decision ultra vires, the courts in general have refused to impose a duty to consult. Exceptionally they are prepared to enforce such a duty, based on a principle of natural justice, where specific assurances have been given, and where legitimate expectations are thus being disappointed. (see Craig 1983, chapter 7). Such an expectation may arise "either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue" (Council of Civil Service Unions.v.Minister for the Civil Service (1984) 3 All ER 935, at 944 per Lord Fraser).

Loughlin (1986) however has warned of the dangers of using judicial review as an external check on local authority action through ratepayer and consumer influence (p170). If they are to be effective in their supervisory role, they would be required to adjudicate on "complex polycentric issues in which fact-finding processes...and the fashioning of relief...raise sensitive political issues" (p198). The danger is that "unless they can define a precise constitutional role, the courts would be required to play a mediating role which might challenge their independence and hence legitimacy" (p198).

This danger, of the courts being used as a process of subordinating politics to the courtroom, has also been recognised by Harden and Lewis (1988), who say that it can only be prevented if ways can be found "to limit the role of the courts to the protection of certain specific rights and to acting as a final quality control mechanism for open and participative policy-making processes" (p206).

#### The Limitations of the Courts

On a more general level, one of the problems of using the courts as a dispute solving mechanism is that those with grievances do not automatically think in terms of legal remedies, and it is thought that

it is those with the least resources who have failed to make use of legal remedies (see Capelletti 1981). One solution to this problem of unmet legal need was to make the legal system more accessible, by the extension of legal aid and the establishment of, for example, neighbourhood law centres. However, there is now a movement towards the idea of using alternative dispute solving mechanisms, such as internal complaints procedures and ombudsmen, as an alternative to the courts.

Courts are thus being seen as one of many different forms of dispute resolution mechanisms, and there is a growing recognition that adversarial forms of procedure may be suited to some sorts of disputes, but not others. In this context, Sir Guy Powles, New Zealand's first ombudsman, has expressed the view that issues involving obdurate disputes of fact are not ideally suited to the ombudsman's procedures, and are best resolved through the courts or tribunals (Powles 1982).

The Barclay Report (1982), too, highlights the limits of the Local Ombudsman system and recommends an independent tribunal for those issues where they feel that local authority members cannot, for one reason or another, produce satisfactory outcomes. It may be that the courts, or tribunals, are more useful in the area of social services than in some other areas of local authority work. The ombudsman system on the other hand, is more like that of a "conscience". Ombudsmen can go further than the courts, and they do not seek to fulfil the same need. Powles (1982) is also convinced that the quieter, more inquisitorial methods of investigation of the ombudsman can succeed where other forms might fail.

In the Sheffield Study it was interesting to see whether the courts or the Local Ombudsman had had the most influence on departmental internal procedures and complaints procedures. Almost without exception, it was the Local Ombudsman who had had the most influence. Thus in planning departments 67% said that their internal procedures had been affected by the Local Ombudsman's decisions, compared to 29%

who claimed that court cases had had some effect; education departments claimed the same level of influence, with both court cases (33%) and ombusman reports (33%) causing procedures to be amended. Housing and social services departments claimed low levels of influence for both the courts and the ombudsman. In social services departments 14% claimed that procedures had been amended as a result of the Local Ombudsman, compared to 3% (2 respondents) as a result of court cases. The figures for housing departments were 9% for the ombudsman and 6% for the courts.

Furthermore, few respondents in the Sheffield Survey wanted any legislative reform which would introduce an independent element into the complaint handling process, either by extending the powers of the courts, or by establishing independent tribunals. In fact, 92% of planning, 92% of education and 81% of housing departments were opposed to extending the powers of the courts in this way. Social services, with 22% in favour of such an extension, were out of line with the other departments, and 76% approved of the establishment of a family court as a method of reforming the complaint handling process. Independent tribunals did not prove to be popular, with the majority of planning (93%), education (85%) and housing (81%) departments opposed to their being established as part of the complaint handling process. This method was not quite as unpopular for social services departments, with 65% opposed to their establishment. Despite this, evidence during the Sheffield Study revealed that external appeal mechanisms acted as a strong incentive to tightening up procedures, and to resolving grievances informally within the authority.

### Conclusion

Despite the problems associated with using the courts to resolve disputes, and despite the apparent hostility felt towards external appeal mechanisms by local authority personnel, the courts do have an important role to play in this area. I would agree with Birkinshaw (1985), when he says that he cannot see "the role of the courts changing dramatically in assisting in the resolution of grievances

against the state" (p172), in relation to individual consumers acting as plaintiffs against local authorities. In this respect, the courts are a poor substitute for resolving disputes internally. But, where the courts can be useful is that the possibility of an external challenge can encourage the use of informal mechanisms for the redress of grievances within authorities, in attempts to avoid appeals.

In these cases, therefore, courts would be used as the last resort, but the possibility of their use could lead to authorities tightening up their own internal procedures. We are some way behind the Australian courts, where there are general appeal tribunals which can review cases on their merits, but nevertheless there are some useful statutory appeal mechanisms where such reviews can take place. However, even in situations where there are these local administrative courts, there is still a need for ombudsmen, and for improvements in internal procedures. One such improvement would be for authorities to have their own complaints procedures to resolve disputes. The extent to which they do so is the subject of the next chapter.

### PART III LOCAL AUTHORITY PROCEDURES

#### CHAPTER 7 AUTHORITY-WIDE COMPLAINTS PROCEDURES

##### Introduction

The previous section explored some of the methods available for resolving grievances: elected members, the Local Ombudsman and the courts. This chapter is concerned with an examination of the extent to which local authorities have procedures to effect settlement of grievances internally, that is, the systems used for receiving and dealing with complaints made by individuals or small groups. As such, it draws to a large extent on the findings of the Sheffield Study, although, of course, it incorporates more recent developments in this area.

Before examining local government's record in this area, it is probably worth noting here that the Sheffield Study agreed with the general impression formed by Watchman (1985), who conducted a survey of complaints procedures in local government in Scotland, that "as complaint-solving bodies, local authorities have a record of achievement over many years which bears favourable comparison with that of other corporate bodies of the same size and significance." (See Sheffield Report 1986, p3).

This point was emphasised by a number of local government officers during the course of the Sheffield Study fieldwork, who challenged the need for such procedures in local government, pointing out that there are a large number of bureaucratic organisations which are far less responsive to the consumer interest than local government. It was argued that local government is democratically elected, and it does have geographical proximity to the clients it serves. As was discussed in Chapter 1, the fact of democratic election is not, of itself, sufficient to legitimate conduct. It was, nevertheless, argued that the numerous forms of legal and political control over



local government activities, for example judicial review; statutory rights of appeal; the Local Ombudsman; fiduciary control by the Audit Commission; and ministerial control by the Secretary of State for the Environment, made internal complaints procedures, if not unnecessary, then fairly insignificant.

Some of these alternative methods of dispute resolution have already been discussed, and despite their advantages, it was concluded that there are advantages in resolving disputes internally, in accordance with a formal complaints procedure. This conclusion is in accord with the Local Ombudsman system, one of its objectives being to "encourage the local settlement of complaints" (CLA Annual Reports), and few would disagree that the Local Ombudsman and the courts should be used as a last resort.

The justification for complaints procedures has already been discussed in the introductory chapters, and although the emphasis in those chapters was in relation to their use in terms of justice and democratic entitlement, issues of efficiency were also mentioned. There is now an understanding that large scale organisations, like local government, are being monitored for efficiency. "Efficiency" is not a simple concept, and it cannot be divorced from the concept of "effectiveness", which in turn depends on evaluating the extent to which the goals of the organisation are being fulfilled. There has to be some means of monitoring, and it may be that complaints procedures can help in performing a monitoring role.

The chapter is concerned with the use of authority-wide procedures for handling complaints, and the question to be addressed is why such procedures are necessary, and what advantages they have over and above specific departmental procedures. The move towards the local authority being seen as a corporate entity rather than a group of service providers has already been noted in previous chapters. The consequence of this is that the proper institutional response to a problem is, in the end, a corporate response, and this may at some stage entail a response from the top of the pyramid. So, despite the

fact that departments may have their own procedures, in the end, it is the authority which has to find a solution, and the role of the chief executive in this context is seen as being particularly important. This role will be discussed in the chapter.

During the course of the Sheffield Study the procedures themselves were examined from a public satisfaction viewpoint, and also from the point of view of managerial efficiency, that is, to the extent to which they could be used as a form of quality control of services. There was a methodological bias towards the views of the officers in local government, and although some canvassing of the consumer viewpoint was sought, the Sheffield Study concentrated on the formal end of the process. This was inevitable, given that the day-to-day handling of complaints occurs at officer level, and this is why the focus of the research was here. However, to supplement this information, councillors were interviewed, files were examined, and the views of consumers were obtained by interviews with representatives of consumer organisations in some of the local authority areas where fieldwork was conducted, and by a consumer survey. Further work has also been done to update the information, beyond the work conducted by the Sheffield Study team.

#### The Consumer and Public Services

One question to be addressed is whether there are distinctive qualities in the provision of public services, which may make complaints procedures more appropriate in this sector. According to the Audit Commission (1988) a local authority exists to provide services for the public, and the only value of these services is "the extent to which they satisfy popular needs" (1988, p5). This sentiment is echoed by the government in the "next-steps initiative", in the following terms:

"...the performance of any operation will be measured not by how much money it spends or how many staff it employs, but how well it delivers the goods and the extent to which it meets the needs

of the consumers for whom its services are provided" (Next Steps Initiative 1990, p ix, para23. Emphasis added).

Unlike the private sector, where making a profit, or at least avoiding a loss is a convenient method of judging the effectiveness of the services offered, local government has, as a rule, no such indicator as "local authority clients are rarely called upon to pay the economic price for services they receive, and there is usually no alternative supplier" (Audit Commission 1986c).

Local authorities therefore have to find some other method of evaluating performance, and one way of doing this is for "'Clients' ... to be treated as 'customers'; services need to be provided for the public rather than simply to it" (Audit Commission 1988, p5. Original emphasis). Indeed, not only is there a need for this, but the Audit Commission claims that clients have become customers "and quality is replacing quantity as the main target for local authorities" (1988, p3).

However, there should be some caution in extending the notion of customer too readily to consumers of local authority services. Indeed, running through the whole next-steps programme is the difficulty of identifying who the customers are. For example, who is the customer in the prison service? (see Next Steps Initiative 1990, p100). One important difference is that in the public sector the consumer does not necessarily buy the service. The service does not therefore profit by his/her custom, and does not wish to expand its share of the market. There may be situations where consumers may want the service and be willing to pay for it, but may be refused on the grounds that they do not meet the criteria for need of the service, criteria which are determined by a mixture of political and professional judgement. Unlike the private sector, consumers in some circumstances may have a right to receive the service, or may even be compelled to receive it. How can one speak realistically about customers being compelled to receive a service? In these cases, the

consumer is not a customer at all, but a citizen with certain rights and entitlements.

Another difference is that, unlike the private sector, the consumer usually has some other major relationship with the service provider, apart from being a consumer, for example an employee, a taxpayer, a citizen (see Pollit 1988, p9). Also, those who pay for public services and those who benefit are not necessarily the same people, so that deciding who shall have access to what, is a political decision (see Potter 1988, p151).

Another distinctive feature of local government is that its consumers may have a lack of choice in some of the services it provides. Being a monopoly supplier in some situations, consumers cannot use "exit" actions as an alternative to complaining. This particular aspect of the public services is discussed by McAuslan (1988) who argues that those who advocate public choice claim that if you increase "exit", you need less "voice" (p694), "voice" being, for example, judicial review of decisions. For example, there is no provision for judicial review of decisions by building societies on whether to grant or refuse a mortgage, because customers can go elsewhere, whereas judicial review of housing decisions by local authorities has developed because clients cannot go elsewhere. The Housing Act 1988 is designed to increase consumer choice, and will facilitate "exit" from the system of council housing. Thus, the "public choicists" argue that there is less need for judicial review, or a voice in the system.

Although there is some force in this argument, all organisations have a duty to act within the law, and although no-one can claim a right to a mortgage as such, an arbitrary refusal to someone who fits the criteria of entitlement may be grounds for complaint to the Building Society Ombudsman. Indeed, the establishment of such ombudsmen schemes by building societies, and other institutions is a recognition of consumer rights in situations where there may not be a formal legal remedy.

This is not the place to discuss the relative merits of the public interest ideology, as opposed to the public choice ideology (see McAuslan 1988), but the example serves to illustrate the point that consumers of local authority services, as in all monopoly supply situations, do need mechanisms for challenging decisions, as the lack of choice means that they cannot obtain the services elsewhere. Such mechanisms are also needed to regulate monopoly suppliers in the private sector, and the problem posed seems to be more one of containing power, rather than differentiating between the public and private. Confronting power goes beyond any such distinction. Indeed, E. P. Thompson (1975) has noted that for effective legitimation, the law must correspond to people's claims of justice and popular conception of it, which means that the law must provide restraints on power - whether in terms of formalised structures of participation and accountability or individual remedy.

However, there may be special responsibilities in the state sector as this sector does not, as a rule, provide the opportunity which may be available in other consumer situations, for example, by the consumers changing their supplier, changing shopping patterns, or changing brand or product (See Hirschman 1970). Where there may not be these opportunities in the in the private sector, for example in situations where public utilities have been privatised, mechanisms have been created to monitor performance and obtain redress for aggrieved consumers.

Another difference between the supply of services by the public sector rather than the private sector is that there is usually no contractual relationship between the "customer" and the supplier of the service so that very often a disappointed consumer, or one who thinks the service has done harm, has little or no opportunity to sue the provider, an opportunity which may be available in the private sector (See Winkler's (1987) study of NHS complaints, p1). There may be an argument for a quasi-contractual relationship in these situations, and the development of public law remedies in this area, on the basis that

legitimate expectations have been raised, could go some way to overcoming the problem.

Although a number of services formerly provided by local authorities are now being performed by private companies, due to the introduction of competitive tendering, there will still not be a contractual relationship between the consumer and the private service organisation. The contract will be with the local authority, or the particular service department. This in itself calls for special attention to be paid to the consumer interest as "in the end the authority cannot decide what is, and is not, good service. Only those who receive the service can do so" (LGTB 1988, p5).

The Local Government Training Board (LGTB 1988) believes that the client viewpoint assumes prime importance in the competitive tendering situation, as "the public's perception of service needs to be measured and used to manage contracts", pointing out that the extent to which a service matches up to standards is a matter of judgement and that this judgement is not always a purely professional one. One method of involving the "ultimate service recipient, the public" in managing and monitoring contracts is to set up complaints procedures and use complaints as measures of performance (p8). This view is endorsed by the Audit Commission (1989), which supports competition, believing that it offers the potential for both lower costs and better services, but recognising that competition calls for "robust monitoring systems" (p1) so that levels of public satisfaction can be monitored "both reactively, by monitoring complaints, and proactively, by public opinion surveys" (p19).

From the findings of the Sheffield Study it seems that local authorities have a long way to go in this respect. Despite a Code of Practice issued by the Commission for Local Administration in 1978 (CLA 1978) which recommended that arrangements be made to monitor inquiries and complaints to see if "collectively they indicate trends which require changes of policy, or procedure", and that there should be "simple systems for recording complaints and queries other than

those which can be fully and successfully dealt with on the spot," (p6), a number of service areas were deficient in this respect.

For example, in housing departments, 59% (68) claimed that they recorded complaints, but only 10% (11) produced a statistical analysis of them; in planning departments 58% (76) recorded complaints, but only 14% (18) analysed them; and for education departments the figures were 39% (13) and 9% (3) respectively. Social services departments proved to be better than the other service areas with 70% (26) claiming to log the numbers of complaints, but, again, only 19% (7) produced any statistical analysis of the complaints. Even these figures are probably an over estimate. Although seven social services departments claimed to produce a statistical analysis of complaints, on further investigation, only two departments were able to present the statistical information. The other authorities admitted that their systems were not operating very well and that such analysis was "not high priority". A study by the Audit Commission and Local Government Training Board (INLOGOV 1985) drew similar conclusions to the Sheffield Study, finding that many authorities lacked "the systems, procedures and organisational machinery which allow information about operational activities to be drawn together so that service performance can be assessed" (p59).

Others have seen the value of complaints procedures as a method of quality control, to raise standards and performance, which has obvious managerial advantages, being valuable for identifying responsibility for making difficult judgements (see Harlow and Rawlings 1984, pp207-210). However few officers responding to the Sheffield Study questionnaire saw complaints procedures in this way, and indeed, it was only in social services departments that the majority considered that formal complaints procedures had advantages for managerial efficiency, with 24 authorities believing this (65% of the sample). Only 45% (52) of housing departments, 39% (13) of education departments, and 37% (48) of planning departments viewed complaints procedures in this way.

This important function of complaints procedures is not just overlooked in the public sector. For example, in their study of the work of the Financial Services Ombudsmen, Birds and Graham (1988) found that the "motivation for setting up these institutions had been primarily defensive" (p318), with the result that the grievance redress function was uppermost in the ombudsmen's mind and quality control and the raising of standards was secondary. The conclusion was that "grievance handling rather than quality control would seem to be the major function envisaged for the 'free standing' ombudsmen" (p318).

This positive role for complaints is much more readily accepted in the United States. A more detailed investigation of the U.S. attitude to complaining will be discussed later in the chapter, but it is worth noting here that in the U.S. complaints are seen as feeding into the administrative process, especially through elected members. Indeed, the Study on Federal Regulation (1977) recommended that "there should be a systematic means of processing complaints so that they can be one of the factors that guide agency priorities and proceedings" (p133).

Clearly, in local government, any claim that complaints are used as a method of reviewing administrative procedures cannot be done in a systematic way, as only a minority of departments actually provided a statistical analysis of complaints. In response to the questionnaire during the Sheffield Study, a number of departments did claim to use complaints as a method of reviewing their administrative procedures, but fieldwork revealed that procedures are only reviewed when particular issues come to the notice of senior officers. This kind of performance review is becoming a crucial area for the newly privatised utilities, and the Gas Consumers Council, for example, keeps detailed statistics on complaints, with monthly reviews and detailed analysis of the data every four months. It follows up "unusual or worrying trends" (Gas Consumers Council 1989, pp18-21).

So, even leaving aside any notion of justice (and, incidentally, the Social Security Advisory Committee (1984) considers that an "effective



appeals procedure is an essential part of any benefit structure" (p51, emphasis added), the managerial benefits of complaints procedures cannot be over emphasised. For those officers who, during the course of the Sheffield Study fieldwork, complained about the resource implications of such procedures, the Audit Commission (1986c), believes that management information "should provide benefits which exceed the cost of providing it" (p7). Given that authorities are concerned to discover how far people's needs are being met, one method of doing this is to examine the level of complaints which they receive about their services. This is especially true in relation to involuntary consumers, for example, children, old-people, and third parties to planning decisions. Procedures providing an effective means of registering dissatisfaction can help authorities to keep in touch with consumers and avoid becoming isolated and unresponsive bureaucracies. There are signs that authorities are becoming more conscious of the use of complaints for performance review. The Local Ombudsman notes that authorities "are beginning to look at complaints and consumer satisfaction from the angle of performance review rather than as a series of embarrassing hiccougths" (CLA Annual Report 1989/90, p30), and also that there are an increasing number of enquiries from authorities about good practice "which are not prompted by particular complaints or by advedrse findings" (p30).

This section began by asking whether there are differences in the provision of services by the public, as opposed to the private, sector. While this very much depends on the level of service provided (for example, sports and leisure facilities have much in common with private sector provision; child-care provisions have no obvious parallel in the private sector), and while all organisations, in particular monopoly suppliers, need to have restraints on their power, the fact that local authorities are to a large extent the only supplier in a number of important areas of a person's life, makes the use of complaints procedures of special importance here.

This chapter is concerned with authority-wide procedures for handling complaints, and, although the various departments should have their

own internal procedures, the value of an authority-wide system must be emphasised. In this respect I agree with Berry (1988a) that, no matter how good a departmental procedure may be, ultimately such procedures "should be available to every user of any local authority service" (p19). Where departments have good procedures, there can still be "a more active, authority-wide, supervisory role for the Chief Executive's office (NCC 1988, p32). BASW (1989), too, sees the advantage of the involvement of the chief executive in the investigation of complaints, "particularly those of a serious nature", as this would mean that there would be involvement by someone who was not concerned with the provision of the service" (p10). To have authority-wide procedures indicates a corporate commitment to grievanceredress, and "would reinforce a coherent change of attitude within the whole authority" (Berry 1988a, p19).

The use of complaints procedures as management information systems has also been raised in this section, and, although not specifically addressed, the concept of efficiency was hinted at. Before looking at the extent of authority-wide procedures, I want to elaborate on the idea of efficiency, and its relationship to complaints procedures.

#### Efficiency, Economy and Effectiveness

Efficiency has become increasingly important in government in recent years (see Birkinshaw, Harden and Lewis 1990, Ch.5), and this is particularly so in local government where financial constraints have forced local authorities to examine how well they use their resources. The establishment of the Audit Commission for local government in England and Wales by the Local Government Finance Act 1982 is a recognition of the importance of efficiency. This independent body has a duty to appoint auditors to local authorities, and to help the authorities to bring about improvements in economy, efficiency and effectiveness directly through the auditing process and through the value for money studies which the commission carries out.

Although "efficiency" is the concept which seems to assume importance, it is important to recognise the other aspects of the Audit Commission's functions. In their handbook (Audit Commission 1986c) what is emphasised is that performance in local government includes both service efficiency and service effectiveness (p8). These concepts are defined as follows:

"Effectiveness" means providing the right services to enable the local authority to implement its policies and objectives.

Efficiency means providing a specified volume and quality of service with lowest level of resources capable of meeting that specification.

...economy ... means ensuring that the assets of the authority and services purchased, are procured and maintained at the lowest possible cost consistent with a specified quality and quantity" (Audit Commission 1986c, p8)

There are dangers with a narrow "value for money" approach. Loughlin (1981) argues that "it provides no realistic indication of relative effectiveness of service provision" and that "effective management is determined by the size of the rate demands" (p446). This danger has been recognised by the Audit Commission itself, which emphasises that "efficiency alone is not enough; it is essential to be committing resources to the right things" (Audit Commission 1986c, p4), and that authorities need to be defining policy objectives and effectiveness, and checking that these are being achieved. The Audit Commission also claims that it is "unwise to assume that value for money and cheapness are synonymous" (Audit Commission Annual Report and Accounts 31/3/85, p11).

This point is taken up by the Local Government Training Board (INLOGOV 1985), which considers that it is necessary to look at "the effectiveness of services as well as their efficiency" (p59). Effectiveness in this context means providing the right services to enable the local authority to implement its policies and objectives. Efficiency means providing a specified volume and quality of service

with the lowest level of resources capable of meeting that specification (INLOGOV 1985, p59).

These ideas are explored at a theoretical level by Birkinshaw, Harden and Lewis (1990, Chapter 5), where they maintain that efficiency is not a simple concept, not even when it is coupled with economy and effectiveness, and that the conceptual differences between these are often obscured rather than explored (p146). These three concepts are often competing goals, and therefore there will have to be trade-offs between them (pp158-160). They also make the point that this is not a particular problem of the public sector, as even within the private sector, managerial discretion cannot be evaluated by any simple criteria of profit-maximisation.

There is, therefore, a tension between efficiency and effectiveness, and it is of little consequence to have economy and efficiency if the authority's objectives are not being met. Therefore, in order to assess whether there is value for money, the effectiveness of the programmes has to be examined. The question is then raised as to how conflicts between efficiency and effectiveness are to be resolved. One way is to rely on managerial discretion, but it must be borne in mind that the role of management is not only to apply technical knowledge, nor merely to fulfil a defined organisational role, but also to design and operate systems to acquire and use information in the decision-making process (p165). There is therefore a need for quality control and monitoring. This is especially true of the public sector, because, unlike the private sector which has, as its main goal, profitability, and money as a common yardstick by which to measure this, much of the public sector output is not priced. It is therefore impossible to use cash as a universal measure of value, so the effectiveness of the service has to be measured in other ways.

Birkinshaw, Harden and Lewis (1990) conclude that there is no escape from the logical necessity to specify goals before issues of efficiency can be raised, and hence no way to avoid the logical priority of effectiveness as a criterion for evaluation of public

policies. Effectiveness presupposes a set of objectives and priorities, and for public policy the concept of efficiency is logically subordinate to that of effectiveness.

What relevance has all this for complaints procedures? As was mentioned in the last section, complaints procedures can be used for management information, as a way of reviewing performance. They are one method of discovering whether people's needs are being met, and therefore how effective the service is. It is a method of quality control to ensure that the service is up to the required standard. At this point it might be appropriate to look at the United States experience of complaint handling, as in the U.S., complaints have a high profile and are seen as a method of feeding information into the policy process.

#### Complaint Handling in the United States

Senator Henry Jackson, in 1965, when referring to congressional auditing and inquiry of executive and administrative programmes, spoke of "the duty of the legislature to cross-examine the powerful" which is "at the very heart of the American system of government" (Senate Committee on Government Operations 1965). Consumer complaints were seen as a method of informing this process. This view is endorsed by Rosenblum (1974), who in his study of citizen initiated complaints, asserts that "federal agency responses to citizen initiated complaints is at the core of our conception of government of, by and for the people" (p2). Rosenblum's study sought information from several government agencies about the procedures they used to follow up complaints; whether they resulted in changes in agency practice; what publicity was given to the procedure; whether there was any statistical recording and monitoring. It was based on the premise that "a democratic system must provide its people with the instruments for holding government accountable to them and for making effective choices from among meaningful alternatives" (p4). If federal agencies respond to citizen needs they can "help otherwise alienated individuals to feel that they are participating in their government's

decision making even when the substance of a particular grievance or complaint cannot be resolved to their satisfaction" (p5).

Despite these ideals, the results of Rosenblum's (1974) survey were disappointing, revealing that 51 out of 64 respondents had no special office or organisational unit specifically responsible for handling complaints. Those without special complaint offices had, not surprisingly, not established explicit routes for processing complaints. Less than one-fifth of the agencies said that changes in agency practice had resulted from complaints. The TARP report (1975) a study commissioned by the office of Consumer Affairs, Department of Health, Education and Welfare, had similar disappointing results. This study was to provide a comprehensive and systematic review of federal agency complaint handling. It found serious deficiencies, including a lack of clarity, order and consistency between agencies with regard to the classification of complaints, statistical reporting and evaluation of complaints. There was little formal policy analysis and no systematic method for transmitting analysis to the senior policy-makers.

Nevertheless Rosenblum (1974) was optimistic that the ability of these agencies to point to changes instituted as a result of complaints provided "a distinct basis for optimism about the capacity ..... to utilize complaints constructively in evaluating and formulating agency programs, procedures and policies" (p12). As examples of this, the Social Security Administration maintained that citizen-initiated complaints had produced "concrete beneficial changes in policies and practices" (p17). The Veteran's Administration said that "complaints from veterans had been "useful in improving its operation or procedures" (p20). And the Food and Drug Administration had made changes in its procedures as a result of complaints, including "a revision of the control system to speed responses and the establishment of an Emergency Response Officer" who would answer "critical consumer complaints" (p31).

The use of citizen complaints to federal agencies can be seen as an alternative means whereby citizens at large can directly make their views known. The aggregate of citizen complaints usually constitutes "the agency's only direct source of information about problems from the perspective of the public" (Study on Federal Regulation 1977, p131). Regulatory agencies are exhorted to make more active efforts to solicit the views of the public, but, in the absence of this, the complaint handling systems of agencies "can be a surrogate for direct public participation" (p131). The study found that most agencies do not have procedures for spotting patterns of complaints as a method of judging the frequency and severity of problems (p133), with consumer complaints appearing to play "a minor role in rule makings, and . . . . in the overall establishment of agency priorities" (p183). However, it did find some cases where consumer complaints appeared to have been part of the impetus for agency rule making. For example, the Civil Aeronautics Board complaint summaries highlighted problems encountered by consumers in processing claims with airlines for lost or damaged luggage (p133). On the basis of this complaint information the C.A.B. office of Consumer Advocate petitioned for rule making on baggage liability rules. The point is emphasised that complaint handling by regulatory agencies is an important area for consideration and reform because "complaint from the public can constitute a direct form of public participation in regulatory policy making" (p137).

As in this country, the use of complaints procedures where services are contracted out is of special importance. Marlin (1984) speaks about complaint handling systems as "an important aspect of the contract monitoring component", as complaints, particularly when analysed by type and change of pattern "can be highly useful tools to the contract manager" (p95). Complaints are therefore a major gauge of quality, because if a serious deterioration of service occurs, elected local officials will hear from their constituents, and he notes that "the incidence of complaints serves as a pulse measuring day-to-day service quality" (p95). It has to be accepted that there will be a certain level of complaints, as standards can never be fully met by authorities with limited budgets, but what is important is any

unexplained deviation in patterns "such as a sudden jump in the frequency of complaints or a change in the type of complaint" (p95). This is an indicator that a change in service quality has occurred and should be investigated.

As in England, complaints procedures are also increasingly being seen as appropriate for the private sector, not just government and quasi-government agencies. For example, The Interstate Commerce Commission, Office of Compliance and Consumer Assistance (ICC 1982) has issued regulations to cover removal firms, to protect consumers on interstate moves and define the rights and responsibilities of consumers and movers. Removal firms are obliged to "establish and maintain a procedure for responding to complaints and inquiries" from consumers and to keep a written record of all complaints and inquiries from consumers (ICC 1982, Section 1056 13). This procedure is publicised by means of a booklet prepared by the ICC ("When you move, Your Rights and Responsibilities"), which removal firms have to give to consumers.

Before leaving this discussion of the American experience, some mention must be made of complaint handling in the city of Chicago, which was observed by a member of the research team during the course of the Sheffield Study (see Sheffield Report 1986, pp 6-17, 76-77). Complaints are handled by the Mayor's office of Inquiry and Information, which has the role of executive ombudsman for the city of Chicago, a city with 3 million inhabitants. Most complaints are received by telephone, and the telephone number is not only widely disseminated, but probably one of the best known numbers in the city. The Sheffield Report (1986) concluded that in terms of publicity, the system was "difficult to better" (p16).

All queries and complaints are logged on the computer and processed and pursued in a systematic fashion. Copies of the entry are printed out and sent both to the appropriate department or organisation, and to the complainant. There is a rigorous system of progress chasing, and a response and explanation is expected and normally received



within 10 working days. The success rate, in terms of complainant satisfaction is nearly 100%.

The unit whose job it is to resolve the problems is part of a larger community liaison unit, which has a city-wide function of consultation with citizen groups throughout the whole of Chicago. There are only 7 officers working on complaints, and they function on a territorial basis rather than specialising in particular service areas. They stay with the cases until the end, and are, in effect, operating as personal ombudsmen for the complainant. Their duties are to follow up the complaints and to keep in touch until a satisfactory solution to the problem is achieved.

As far as monitoring is concerned, a statistical analysis is performed daily, monthly and annually. The computer system also assesses the waiting time for each telephone caller before being passed on to an investigator. Each day the computer is programmed to cross tabulate automatically in the respective service areas and the 50 electoral districts. Such analysis has proved invaluable in highlighting structural defects in sewerage, and street lighting.

Complaints forms are divided into the 50 wards of the city and into 41 separate heads of complaint, and analyses are done in order to identify trends for the purpose of quality and systems control. In this respect the city is following the recommendation of the Study of Federal Regulation (1977) that "there should be a systematic means of processing complaints so that they can be one of the factors that guide agency priorities and proceedings" (p133).

The complaints office also deals with complaints in relation to the police, fire and ambulance services, and even Federal agencies. The cost of the service is about £1 million per year and this includes the cost of the neighbourhood forum, which is an active city-wide consultation device.

There is no doubt of the value of the system as a management tool. The regular cross tabulations on the computer relates complaints in particular services to individual wards or districts and thereby alerts the city to system defects. This system was far in advance of any systems found in the local authorities visited during the Sheffield Study, in terms of analysis and monitoring. I will now direct my attention to an examination of complaints procedures in England.

### Complaints Procedures in England

We are still some way behind the United States in the approach to consumer complaints, despite strong recommendations that local authorities should develop complaints procedures, that is, develop their own internal arrangements for receiving and investigating complaints. In 1974, Redcliffe-Maud recommended the adoption by local authorities of clearly established, well publicised procedures for the reception and investigation of complaints by members of the public (Redcliffe-Maud 1974). In 1978 the Commission for Local Administration, in consultation with the Local Authority Associations, issued a Code of Practice for local authorities in relation to complaints (CLA 1978). Calls for such procedures have also come in the international sphere:

"There have to be grievance procedures - the public demands them - and if the orthodox judicial system does not supply them, the public will turn to the Ombudsman to fill the gap" (Ferns, Goodman and Mayor 1980, p9).

Previous research into the effect of these calls for procedures is sparse, although local government has received more attention than central government in this respect. Rawlings (1986) sees this as a function of the Local Ombudsman system, as the Commission for Local Administration "places much greater emphasis than the PCA on encouraging authorities within its jurisdiction to improve and publicise their own grievance procedures" (p92).

Research that has been done (see Rawlings 1986 for a review of current research) indicates that the recommendations of Redcliffe-Maud and the CLA have not been heeded. Justice (1980) found that less than 20% of the local authorities interviewed had taken significant steps to improve complaints handling in response to the CLA's code of practice, and that good procedures were "thin on the ground". The majority of authorities had developed procedures for dealing with complaints referred to the CLA, but not for those in the pre-referral process. Even when procedures did exist, the publicity for them was sparse. The intervening years have not seen a remarkable improvement in this area. The Sheffield Study found that only 35% of local authorities had formally adopted the code. There were even some officers who telephoned asking what code was being referred to, when they were trying to complete this part of the questionnaire during the Sheffield Study.

The issuing of the 1978 Code also stimulated research by Lewis and Birkinshaw (1979a) and Evans (1979) into the allocation of decision making functions in local authorities. Lewis and Birkinshaw's research (1979a) involved a study in which 300 authorities replied, and a field study in one authority. It found that about half of the authorities surveyed had no recognisable procedure; about a quarter referred resistant disputes to committee, with others using senior officers (or executive ombudsmen) to conduct a review of the decision. (For work on the executive ombudsman see Wyner 1973 ; Mohaptra 1976). Watchman (1985), too, found variations between authorities, but procedures in Scotland generally are not as advanced as in England with formal machinery for complaints about administrative performance scarce. Lewis and Birkinshaw (1978, 1979b) also did some general survey work on local authority grievance mechanisms in the late 1970's in which they found that the statutory provisions which gave procedural protection were haphazard, owing as much to chance and political pressures as to any analytical design. In respect of non-statutory procedures, most areas were poorly provided for, with school allocation and personnel matters being the only areas with developed procedures. They also found considerable differences between

authorities, a finding supported by the Personal Social Services Council (1976) in their survey.

Other studies have looked at particular areas of local government activity, most of these being in housing. For example, Lewis (1976) and Lewis and Livock (1979) have looked at decision-making chains in council house allocation. The Advisory Centre for Education (1981, 1982) surveyed local authorities on their practice and procedures in the area of suspension of children from schools and Pratt and Grimshaw (1985) looked at Sheffield LEA's procedures for determining whether or not to refer school attendance cases to the courts. There have also been studies of the personal social services, which will be discussed in the next chapter.

Besides the lack of empirical study, the haphazard intervention of the law in this area has led Lewis and Harden (1982) to criticise the lack of theory in this area. They bemoan the fact that the Local Ombudsman has not yet produced "an all-purpose, inclusive grievance procedure requirement across the face of local government" (p67) but what has existed instead "for more than a century" are "various legal requirements which afford piecemeal procedural protection to members of the public, especially in the field of ..... grievance procedures (p67).

The purpose of the Sheffield Study, therefore, was to try to rectify this dearth of knowledge about the existence of complaints procedures in local authorities, and to discover details of those that do exist. In particular it was concerned to discover the impact of the Local Ombudsman on the way local authorities process complaints and whether any changes had occurred since the issuing of the 1978 Code of Practice; whether complaints and complaints procedures have any bearing on the efficiency of local government performance, and whether they are seen in a managerial way as a form of quality control; whether there are different types of mechanisms which are more suitable for different types of complaints; whether the different

service areas reveal different types of complaints which will require different responses.

Some more knowledge of the way procedures are interpreted and incorporated into the work of the personnel within the authorities, and whether there are different approaches and practices across authorities was another area of concern and whether there are different departmental responses within the same authority. It may be that some organisations, or some departments, lend themselves to grievances because they have to make negative decisions, and no matter how good the institution, there will still be complaints.

Before embarking on a discussion of these procedures, it may be useful to examine the role of the chief executive, in this area, as s/he is often central to the implementation of the corporate process.

#### The Role of the Chief Executive

There is no doubt that chief executives have a special status and authority in local government. In 1985, INLOGOV (1985) could claim that despite "a few well-publicised examples, the post of chief executive has become firmly established in local government" (p77), and in 1982 there were only 7 authorities which specifically stated that they did not have a chief executive or someone with similar duties. Their functions include public relations; corporate planning, personnel; management services; administration; project co-ordination; research and intelligence. Virtually all local authorities have a chief officer management team, which is invariably co-ordinated by the chief executive's department.

With the move towards a corporate management approach in local government, the role of the chief executive becomes of crucial importance. The Audit Commission (1988) believes that the chief executive is "central to the implementation of these corporate processes" (p11) and that his/her role must be more clearly defined, as current practice varies greatly. Some chief executives have few or

no staff; others manage large departments; some are very much in control of the running of the council; others seem remote from operational management. The Audit Commission sees the need for a strong chief executive in every authority "responsible and accountable for translating the council's corporate policy into action" (1988, p11) believing that s/he "has a pivotal role in managing the inter-relationship between the political and the management processes". (p11). Whatever the views of the Audit Commission, the Local Government Training Board found that, although many chief executives saw themselves as able to act as brokers or facilitators in respect of difficult decisions or relationships, "few want to act as arbiters, particularly where issues arise between the parties on a council" (LGTB 1987, p8).

There was some discussion of the role of the chief executive in Chapter 4. In this section I want to look at the role they (or some senior officers in their department) play in complaint handling in general, and in relation to Local Ombudsman complaints. This is based on the questionnaire returns of the Sheffield Study, supplemented by interviews.

There are differences in the roles chief executives adopt, classified at each extreme as post box or investigator. Most, of course, expect chief officers to run their own departments, stressing that the chief executive should act as a final court of appeal only. However, a more extreme view was expressed by the town clerk of one authority who felt that any complaint procedure which had a fail safe to the chief executive was bad in principle. He maintained that chief officers are responsible for running their services, and if the complaint chain led to him "the system has failed". He saw his major role as keeping the council financed and legal, and that he was "not a letterbox". Another example of this kind of approach was the suggestion by another chief executive that it would be "quite an affront to a chief officer to have his judgement questioned" by a member of the Local Ombudsman investigating staff, who may be young and inexperienced.

This view was out of line with the views of most other chief executives, who, although allowing for the autonomy of chief officers, nevertheless have taken on the role of the final court of appeal. So, for example, when there are serious complaints, many chief executives request specific information, prepare their own report, and ask for further information if necessary, although it should be stressed that for the most part serious complaints are handled by chief executives as a defence against the Local Ombudsman. Sometimes chief executives play a co-ordinating role in complaints handling, particularly if it is a sensitive issue, or one that involves several departments. Some chief executives would call for the file and interview officers if they found the departmental response unsatisfactory in some way.

On the whole the impression gained from the Sheffield Study was that chief executives liked to see themselves as neutral arbiters, and, though obviously not wishing to impinge on departmental territory, this view has much to commend it, as they can take a more detached view. Leak (1986) in his study noted the advantages of this detached, mediating role, observing that private solicitors dealing with housing cases were happier dealing with the Administration and Legal Department rather than the housing department because there was "no core of accrued hostility, but rather they're looking for a solution as quickly as possible to cause minimum disruption and minimum bad publicity" (p319). Their neutrality was evidenced by one case where an action was brought against the council for statutory nuisance in respect of two damp houses. Following an environmental health report, the council's solicitors had taken the view that the action could not be defended, and had entered a plea of guilty, much to the displeasure of the director of housing. Housing department staff were found to be defensive, but the solicitors, removed from direct involvement, found it easier to accept liability (Leak 1986, p319).

An interesting aspect of the neutrality of the chief executive's department was noted when reading some complaints files of one authority during the course of the Sheffield Study. Here, a complainant saw the officer in charge of complaints not only as a

neutral party, but almost as a 'people's friend', as evidenced by a memorandum from the complaints officer to the housing office.

"Meanwhile, Mrs. P. (Complainant) refuses to meet Mrs. A (Housing Officer) on Friday 14 June unless I accompany her. I do not propose to do this if Mrs. A can sort something out before then".  
(emphasis added)

This role of the chief executive in complaint handling seems to be a natural progression from the part played by many chief executives in dealing with Local Ombudsman complaints. The Sheffield Study found that 78 (56%) authorities had formal procedures for handling such complaints, some chief executives remarking that it was not necessary to have formal procedures, as there were too few complaints at this level to justify them.

Those that did have procedures used them mainly for internal purposes, for officers and members, and in particular to inform members of the procedures to be followed if they were asked to refer a complaint to the Local Ombudsman. Only 29 authorities made their procedures available to the general public. It was noted that, whatever the type of procedure, all emphasised the central role of the chief executive in this area. Indeed, the main purpose of some of the procedures appeared to be a method for making sure that the chief executive was both made aware of the complaint, and allowed to oversee its investigation. Some procedures specifically mentioned that investigations "will be monitored and recorded by the chief executive's department". Even in those authorities where there was no formal procedure, the practice had evolved of the chief executive co-ordinating responses, and being kept informed of the progress of such complaints.

Although playing a central role in co-ordination of the complaint, this role can take different forms. In one authority the procedure document noted that the role of the chief executive was one of "seeking to avoid findings of maladministration against the Council,



not by attempting to hide evidence of maladministration, but by seeking a local settlement where the chief executive is satisfied that there has been maladministration". The chief executive, when interviewed, admitted that he found this a difficult role, as the Local Ombudsman's office expected him to adopt an independent stance and use his influence to make sure that "all the facts are produced and presented accordingly".

This was, however, an unusual attitude, and in the main, chief executives saw themselves as adopting a neutral role. In these circumstances, complaints officers would perform a useful role, but, as shall be seen, little attention has been paid to the possibility of such officers. In one authority the senior assistant solicitor saw his job as defending the council against complainants, but the influence of the chief executive and the introduction of a complaints procedure had encouraged officers to see complaints positively and to take a less litigious stance. Thus, the procedure, and the chief executive had affected staff attitudes and there was a greater willingness to accept fault by officers and members. The standard pattern for authorities with formalised procedures was that chief executives would send a copy of the complaint to chief officers for comment, and on the basis of this submit a report to the Local Ombudsman. Even authorities without formalised procedures had well established practices, with the chief executive seeking information in the same way.

In some authorities chief executives had a more investigative role, these being mainly the larger urban authorities. For example, in some London boroughs, rather than asking for comments from chief officers about a complaint, chief executives asked specific detailed questions to elicit the information thought to be relevant, and of interest to the Local Ombudsman. In these authorities there was no indication of defensive attitudes, and the chief executives saw themselves very much as neutral arbitrators.

Alongside these various roles adopted by chief executives, there were varying levels of involvement by officers and members in Local Ombudsman complaint handling. Some authorities were very officer oriented, and had member involvement only to the extent that when there was notification that there was going to be an investigation the chief executive would notify the chair and deputy chair of the relevant committees "so that they are aware that an investigation is taking place". Other authorities involved members at a much earlier stage, although this is not necessarily advantageous. For example, one authority had recently reviewed its procedures to reduce member involvement, after it was criticised by the Local Ombudsman for being too inflexible, and thus missing opportunities of finding quick and readily acceptable solutions to complainants' problems. The old system, involving full reports being prepared for the relevant committees, was seen as no longer necessary, except where policy issues were involved, and the chairperson of the committee concerned directed that a full report be prepared. The new system involved an informal discussion based on a short report, with the chief executive, chair and vice-chair of the committee, and the referring councillor.

Some authorities did report in full to committee before taking action, but these tended to be small authorities with few complaints. Most procedures involved chairs and sometimes vice-chairs of committees, together with the leader of the council, with the option of referral to committee for discussion. Members were also encouraged to inform chief executives immediately they were asked to refer a complaint to the Local Ombudsman so that the authority could begin its own internal investigation in advance of the notification.

Although playing a central, co-ordinating role in Local Ombudsman complaints, some of the systems used by the chief executives' officers left much to be desired in terms of record keeping. One of the striking features of this part of the Sheffield Study research was the poor filing systems employed by authorities for Local Ombudsman complaints. In some cases "chaotic" would be an apt description. Some authorities kept all cases on one file; some could not produce a

full set of Local Ombudsman complaints files, as some files were kept in the relevant service departments; many files ended abruptly with no record of the actual result. This certainly is one area where proper files should be kept if there is going to be an attempt to use complaints managerially, and indeed, it is an area where the ombudsman has commented (see Chapter 5). This is also highlighted in the health service, where the Health Service Commissioner has commented upon "inadequate keeping of records" (para 11) and "reports of a lax record keeping" (para 17) which in some cases had led to inadequate supervision of patients and even death" (Health Service Commissioner 1989, para 8).

One advantage of the chief executives' involvement with Local Ombudsman complaints, from the point of view of the Sheffield Study, was that they were able to act as co-ordinators for the questionnaires which needed to be completed by chief officers in some of the service departments. Indeed, chief executives seemed to see this as part of their function in eliciting a corporate response to the request for information. Some of the findings from the Sheffield Study will now be examined.

#### Existence of Complaints Procedures

In order to avoid any confusion, for the purpose of the research, the definition of complaints found in the 1978 Code of Practice was used:

"Complaint ..... should not be too narrowly defined. The definition should certainly cover the small minority of matters which are clearly complaints and may end as allegations of injustice caused by maladministration and be referred to a local commissioner. It should also, however, cover those other approaches to Authorities, whether for advice, information or to raise an issue, which, if not handled properly could turn into a complaint" (CLA 1978, para 1.2).

The fact that this definition was being used was made clear on each of the questionnaires used for the Sheffield Study. Despite this, some respondents wanted to quibble with the use of this definition and wanted a more narrow, legalistic definition. For example, the officer of one authority who co-ordinated Local Ombudsman complaints, made a point about the difficulty of the definition of complaints, adding that this made it difficult to actually quantify the numbers of complaints received, because "a complaint may develop from what was initially a request for information". Other officers would simply begin the interview by saying "anyway, what is a complaint?".

Rawlings (1986) notes the practical difficulty of defining when a grievance crystallises, but takes "a relaxed view" of "wrong-righting" activity, to the extent that he is prepared to include planning inquiries in his review of research into grievance mechanisms (p3). Like Rawlings, this study takes a relaxed view, and follows the ombudsman view that complaints procedures are devices for channelling information, to enable local authorities to handle complaints better and provide them with some form of quality control.

Those authorities which do have a definition in their procedural documents recognise that the definition should not be too restrictive:

"A complaint can be widely defined. It may take many forms from a complaint on repairs work to an allegation against an individual. It may be in the form of a telephone, personal, written or other form of communication. There are routine complaints which can be dealt with at the front reception level, or more serious ones which need investigation by senior staff members" (procedure document).

A number of others work on the assumption that the definition is obvious:

"The system is designed to deal with serious complaints where normal procedures have not had the desired result"

Some authorities' publicity about complaints against the council make it clear that a complaint is seen somehow as a notification of injustice:

"A person who thinks he has suffered injustice at the hands of the Council should: FIRSTLY go to the Council department concerned and complete a blue complaint form"

Some councils adopt a more flexible approach with the emphasis on dissatisfaction.

"UNHAPPY about the way in which the Council has handled something for you? DISSATISFIED enough to want to complain and pursue the matter further?"

Other authorities take a different view and talk in terms of "complaints/suggestions" in their publicity material.

It may be that a more vigorous approach to the problem is called for, and that there should be a consistent set of definitions in this area. The Study on Federal Regulation (1977) recommended that "a consistent set of definitions for the term complain, complaint-handling system, jurisdiction and authority etc., should be developed and applied in all Federal Central Office complaint handling systems" (p137). The Interstate Commerce Commission uses a definition which is narrower than that of the Local Ombudsman, specifically excluding "requests or inquiries concerning interpretation ... (and) other informational matters", and includes within its definition "any written or oral communication received from any person alleging violations or improper practices by any carrier" (ICC 1982).

While such consistency may be an advantage in some circumstances, in practice it is often necessary to accept the consumers' and officers' interpretation of events. "Complaint" is an elusive and context dependent concept, and a grievance can evolve according to both the circumstances and the individual actors perception of the event. As

an example, the statement that vermin is present in a council flat would be a complaint to a housing officer, but not to an environmental health officer. Complaint therefore, is seen as referring to the area of unresolved grievances, and despite its elusive nature, and the fact that the definition could pose ambiguities, it was found, like Lewis (1979), that, on the ground, it is relatively easy to distinguish complaints from mere requests for information.

The Sheffield Study revealed tht 63 (45%) authorities said that they had an authority wide procedure for handling complaints with 48 (34%) claiming to have a committee or sub-committee as the final link in the grievance chain. The Sheffield Study fieldwork and follow up work revealed that the claims to have a procedure were an overestimate. What many authorities meant by claiming to have a procedure was that, given sufficient fuss by a complainant, there would be a "corporate response". The claim to have a committee or sub-committee as a final link was in many cases an admission of the right of a member to raise an issue at committee level if s/he wished. The local councillors' role in dispute settlement has already been discussed at some length in chapter 4. However, it must be borne in mind that councillors, at the end of the day, are responsible for the running of the authority. It is therefore surprising that the Sheffield Study survey revealed that they had only a small role to play in grievance resolution. While acknowledging that it is always possible for a councillor to raise a grievance at committee, any formal role they play appears to be restricted, as evidenced by the fact that, of those authorities with a grievance procedure, only one-third uses a member-only committee or sub-committee as a final link in the grievance chain.

Sometimes chief officers did not realise that the authority had a complaints procedure. For example in one authority's returns, chief officers had all answered "No" to the question whether the authority had a complaints procedure, but the chief executive's assistant had changed all these to "Yes" and referred to page 31 of the Rates Booklet. This "procedure" was an invitation to anyone with a complaint to speak or write to the department or official concerned;

to write to the Chief Officer of the department, if this fails; to write to the Chief Executive if still not satisfied; finally, to use the local councillor, and then, if the complainant feels s/he has suffered injustice through maladministration, approach the Local Ombudsman. Indeed, a number of authorities claiming to have such procedures were little more than this, that is, a suggestion that complainants pursue their complaints up the managerial hierarchy, and in the last resort, write to the chief executive.

Some authorities rejected the need for a more formalised system than this, on the grounds that they did not believe in having "elaborate procedures for dealing with matters which only occasionally arise". Some were concerned about the amount of resources allocated to complaints as opposed to the amount allocated to the services themselves. One authority with this particular concern was in the process of devising a complaints procedure, with the novel idea of having the chief environmental health officer as the supervisor of the system. This was thought to be in keeping with his responsibility for trading standards and consumer protection.

Another example of the mismatch between questionnaire response and the system on the ground was the chief executive (albeit recently appointed) who said that he was surprised to see that a complaints procedure existed, and that he was not aware of the existence of a complaints officer even though this had been mentioned in the questionnaire returns from his authority. Nor had he ever seen a complaints form, although a copy was submitted with the questionnaire return. The chair of the housing committee in one local authority had no idea that a new centralised system for handling complaints had been introduced. In another authority, a procedure document, which incorporated many aspects of the 1978 Code of Practice (CLA 1978), including a demand that chief officers issue a written procedure for complaint handling in their respective departments, was found to have been inoperative since 1980. The borough solicitor knew nothing of the procedure, and there were no written departmental complaints procedures.

However, despite the limited existence of complaints procedures, some good practices were found in authorities visited during the Sheffield Study. Before examining these I will compare the experiences of some of the service departments in relation to complaints procedures. This is because it was found, when analysing the departmental returns during the Sheffield Study, that departments had quite different views on this subject. The variety of experiences within the different service areas emphasises, once more, the need for a central, authority-wide procedure, so that, irrespective of departmental provision, there is some consistency of provision, and in the last resort a more neutral approach to the problem. The purpose of the next section is to indicate the diversity of views.

#### Departmental Complaints Procedures

The majority of chief executives (61%) thought that complaints procedures were desirable, and, indeed, the Sheffield Study research itself played some part in alerting authorities to the need for, and advantages of, such procedures. Chief officers in the service departments had widely differing opinions about the desirability of formal written complaints procedures within departments. Social services departments were strongly in favour of such procedures, with 70% (29) responding favourably to the question. Altogether 63 (54%) housing departments were in favour, but only 49 (37%) planning and 11 (33%) education departments thought they were desirable.

This view of desirability is reflected in the existence of such procedures across the service departments. 65% (24) of social services departments had formal written procedures for resolving complaints, but only 45% (52) of housing departments, 31% (41) of planning departments and 39% (13) of education departments had them. There were definite departmental responses, which were independent of the "central" view. So, for example, many housing officers saw the main problem being that of scarce resources. They did not like too much discretion, and saw complaints procedures sometimes as a method of "jumping the queue". Indeed, one chair of the housing committee in



a large urban authority was anxious to create technically good administrative machinery and reluctant to make allowances for an aggrieved individual. Planning officers saw complainants as mainly third-parties to planning decisions, who would try anything to prevent unwelcome development, and whose main concern was to protect their property values.

Few education departments had formalised procedures, and education officers appeared unconcerned about this. Many seemed to think that problems or complaints were best sorted out at school level, on an informal basis, and the Sheffield Study found nothing to contradict Hannon's (1983b) finding of "a definite professional hostility in education towards legal norms and forms" (p212). Thus she found that the educational press regularly lament new instances of the incursions of the law, especially litigation (p212). During the course of the Sheffield Study, education officers appeared to feel that appeals panels, for example, for education matters in general would not be useful, believing that departments operated on the whole fairly and efficiently, without the necessity for them. One officer remarked that "legislation in this area would take away flexibility - including the flexibility to prevent some matters going to appeal". Hannon (1983a) has also observed that many professionals within education departments believed that to think in terms of legal rights encouraged a disputatiousness not in the best interests of the child (p275). I would agree with her conclusion that "to emphasise legal rights encourages a more assertive defence of, and demands for improvement in, the delivery of services" (p275).

What is evident from the comparison between the service areas, is the importance of professional ideology which can be at variance with the corporate view of the authority. This tendency was observed by Leach and Stewart (1986) who noted that "the present reality of local authorities is less the variety of local choice, than the uniformity of shared assumptions", including "reliance on professional expertise and a departmental way of working" (p3.4). Stewart and Greenwood

(1985) also noted the tendency for local authority departments to be professionalised:

"The main source of recruitment is professional, in that within each department there is a dominant profession from which the chief officer and most of the senior staff are likely to be recruited ..... professional careers involve mobility between authorities with the professional providing the common link and the loyalty. *The professional basis encourages shared standards of behaviour, common (standardised) skills and expertise, and the development of common problems of working in local authorities*".

What all this means is that staffing, training, and development is outside the control of individual authorities, and that rather than there being local choice, there are uniformities of accepted practice. Hannon (1983b) observed this in particular in education departments where, at one time, "it was considered commonplace that for the education system to work well (or at all) it must be based on trust, shared values, and the competent management of benign professionals utilising informed discretion" (p211).

In this context, the idea of rights and appeals is even more important, to challenge these assumed values. Hannon (1983a) noted that education officials found the concept of rights, and fair hearings, "anathema" or "inappropriate" (p283), an observation endorsed by the Sheffield Study. Other service areas were not so hostile and the fact that social services departments favour more formalised procedures may be a reflection of the concern, expressed by social services officers, for adequate information channels for consumers. Issues relating to social services and planning will be taken up in later chapters.

As was mentioned before, the majority of chief executives saw the desirability of formal procedures, and saw the need for improvement. The most popular form of improvement supported by chief executives was, not surprisingly, the introduction of a formal published

complaints procedure, with 61% (86) advocating this. In addition 43% (60) would like to see a committee or sub-committee as the final link in a grievance chain. However, there was a marked reluctance to have such improvements implemented by a change in the law, with only 3% (4) agreeing that legislation had a role to play here.

The service departments too revealed an overwhelming dislike of implementing reforms by legislation. Only 40% (15) of social services, 10% (7) of planning, 12% (4) of education and 23% (27) of housing departments thought it was desirable to have legislation requiring a general authority wide procedure. Even less [16% (6) social services; 2% (3) planning; 9% (3) education and 12% (14) housing] wanted to see legislation to establish independent tribunals. This resistance to the imposition of complaints procedures by legislation came out strongly during Sheffield Study fieldwork, where it was viewed with resentment and as just another example of central government interference. It was thought that a system imposed by legislation would be too inflexible, and would not allow for the widely different needs of the various local authorities. Very few departments viewed formal complaints procedures positively, as an aid to management efficiency, a point which has been discussed earlier in this chapter.

Even consumers of local authority services recognise the advantages of formal complaints procedures. During the course of the Sheffield Study, a survey of consumers was conducted in a London borough. The desirability of formal complaints procedures was expressed by the overwhelming majority of respondents (89%) to this survey, irrespective of their class or method of housing tenure. The main reason (66%) given for this was that it would enable complainants to know how to complain, and this reflects an acknowledgement that part of the frustration encountered in dealing with council departments stems from ignorance of departmental procedure. About a quarter of the respondents felt that knowledge of the correct procedure would ease the way for them, speeding up the whole process, and maybe even producing a more satisfactory outcome.

As many of these consumers had expressed dissatisfaction because of delays, a quicker response and a better response may be one and the same thing. Some consumers even acknowledged that council officers would find it easier to handle complaints if the public had a better idea how to make them. Others recognised the accountability role of such a procedure, mentioning that it would give them a democratic avenue of access, a way of being heard, and an element of protection against being "fobbed off". Procedures were thus perceived as a mark of open government, and as facilitating communication, rather than adding another undesirable layer of red tape, which was an argument often advanced by officers against the use of complaints procedures.

Of the authorities with formal complaints procedures, only 18 publicised the procedure, mainly in the form of posters in council offices, or some information in the rates booklet. The rest admitted that the procedures were for internal consumption only. This confirms the view that such procedures serve managerial functions, rather than being seen as participatory and democratic (see Birkinshaw 1985, p61). It is also a reflection of how the public are not kept informed of local authority matters in general. For example, a research study conducted for the Audit Commission by MORI in 1986 (Audit Commission 1986) found that only one third of the public in England and Wales said they were kept very or fairly well informed about the services and benefits their local council provided. 60% of respondents said that they were given only a limited amount of information or not told much at all (p24). Not surprisingly, the Audit Commission concludes that there is much scope for improvement by local authorities. While recognising that most members of the public would not want to interest themselves in the intricacies of local government finance, nevertheless the Commission believes that local accountability cannot be fully effective "without voters having at least a basic appreciation of the way local services are managed and funded" (Audit Commission 1984, p50).

To return to the findings of the Sheffield Study, in relation to publicity for complaints procedures, one London borough which

considered itself very consumer oriented, produced an A-Z Guide to its services for the general public. In this well-produced booklet "complaints" had been added, by hand, as an after-thought, between "Community Centres" and "Consumer Protection", but it merely said: "COMPLAINTS: see Neighbourhood Office". However, under "Neighbourhood Office" there was no specific reference to complaints or the methods of dealing with them, only that "staff are on hand to help with" certain matters, such as council house transfer, lettings and repairs, street cleaning, home helps etc.

Publicity for departmental procedures was just as poor: 35% (13) of social services departments, 9% (6) of planning departments, 30% (10) of education departments and 34% (39) of housing departments claimed to publicised their procedures. Again, such publicity was in many cases for internal use only. Even social services, with a relatively good record on complaints procedures, were mainly concerned to have internal procedure documents which were seen as a method of allocating staff responsibility rather than enabling complainants to make their voice heard. They appeared to be used as protection for social workers, who seemed all too aware of the necessity of making their decisions accountable in an increasingly critical environment. Publicity can also be seen as another aspect of communications, which, as INLOGOV (1985) points out is not only good for public relations "but should reduce unnecessary opposition and resentment" (p88).

To conclude this section, it must be said that in general the Sheffield Study found unpatterned, informal methods of complaints handling, which owed more to the persistence of some complainants than to a commitment to open government and natural justice. However, since the conclusion of the Sheffield Study, there is evidence that local government is becoming more responsive in this area, and the Local Ombudsman is prepared to say that the absence of a complaints procedure is, of itself, evidence of maladministration (see Chapter 5).

What this section has indicated is the variety of views and practices within departments, and this lends support to the argument for an authority-wide system, so that all users of local authority services have the right to have their grievances heard. Such a system would also mean that particular professional views and ideologies would not be so able to subvert any initiatives which an authority, as a corporate entity, developed in this area. Particular aspects of two service areas, social services and planning, will be examined in later chapters, but I want to return now to authority-wide procedures, and outline some good practices which were noted during the course of the Sheffield Study in these centralised systems.

#### Good Practices

A number of authorities had systems and procedures which were worthy of note, and which could be used as a model for other authorities. One example is the authority which introduced a complaints system in 1968, as a result of a Conservative party manifesto commitment to run the borough along "industrial lines", like a corporation with a "Board of Managers", cost effective methods and an emphasis on consumer interests and market forces. Consequently a complaints procedure was established, which was retained by subsequent Labour administrations, as, by then, the Local Ombudsman system was about to begin.

The feature of this procedure is that there is a named individual, sometimes called an "executive ombudsman" who is in charge of complaints. The authority now plays down the title "executive ombudsman" as it causes confusion with the Local Ombudsman and his actual title is Complaints Executive Officer. He is empowered to receive and investigate complaints about any matters over which the council has jurisdiction. If a matter is beyond his jurisdiction he will pass on the name of the relevant body to whom the complaint should be made. His remit is to find, through administrative means, and in consultation with chief officers, a solution to the individual's grievance, so that where possible the complaint should be

resolved either by explaining why a decision has been made or by getting that decision altered.

Sometimes complaints reveal faults in the system, which he will discuss with the chief officer concerned with a view to making improvements. He can be particularly useful where more than one department is involved, and his inside knowledge enables him to go directly to the person responsible for a particular decision, not simply the departmental head. As he has established working relationships with officers in the various departments, he is able to achieve solutions to grievances through negotiation on a more informal level, and in some circumstances he can overcome the intransigence of bureaucratic decision making.

As far as publicity is concerned, this borough funds its own advice centres, which are obviously aware of the complaints officer's role, as are ward councillors, but there is no direct publicity. Sometimes members refer a complaint to him. One of the advantages of this system is the fact that there is a named person who will oversee complaints, but the lack of publicity is a drawback.

Another interesting procedure was found in a district in the south east of England. This district operates a system of pre-printed postcards, which was introduced in 1976 as a result of the Conservative party's manifesto commitment in local elections. The system operates by means of yellow pre-paid postcards, which are available for members of the public to give brief details of complaints or suggestions. These postcards are available at council offices, libraries, post offices, doctors surgeries and citizens advice bureaux. Councillors, parish councils, ratepayers and residents associations have supplies.

When the postcard is received in the Administrative Service Department it is passed to the relevant department and an acknowledgement card is sent to the complainant saying which officer is dealing with it, and quoting a reference number. Hoax, frivolous or anonymous cards are

destroyed, but these are only a tiny minority of the cards received. If the complaint refers to a matter which is outside the authority's jurisdiction (e.g. police, water authority or county matter) the complainant is referred to the relevant authority.

The smallest number of cards received in any one day was three, and the largest was 358, although this was as a result of an experiment, when the council delivered two cards to every household with the three-monthly supply of plastic refuse sacks. This experiment was the members' idea, and was obviously resented by the officers, who spoke disparagingly of a "brainwave" by the members. As a result of this experiment, 110,000 cards were delivered, which resulted in 2,600 cards being returned, of which 700 were complaints about the quality of the refuse sacks. Apart from this experiment, most of the complaints are about refuse collection, holes in the road, street lights or stray dogs, and many of the matters complained of have already been noted by inspectors and are being dealt with.

The Administrative Services Department registers all complaints and files them according to wards for ward councillors to inspect. They have a Complaints Sub-Committee of eight members which meets seven times a year, in line with the regular committee cycle. The committee's task is to monitor complaints, and they look at the progress, type and number of complaints in relation to wards. Each ward councillor in the 20 wards receives a copy of the list of complaints for his/her ward.

In terms of the resource implications of such a scheme, although it is time consuming, no extra staff or resources are allocated to the scheme, not even when the refuse sack experiment was conducted. The post-card scheme work is supposed to take priority over other work, and there is a time limit for responses. Staff are thus expected to fit the work into their normal work load.

The authority rarely has any feedback about the complainants' satisfaction with the council's response, and it may be that



complainants are still dissatisfied. However, as ward councillors are provided with complaints lists, they may do their own follow up. It is certainly the case that members see the scheme as a useful public relations exercise, and therefore they may be keen to ensure consumer satisfaction. It would be a relatively easy exercise for the authority to do a statistical analysis of the complaints received under this scheme, and they do some monitoring where there are a number of similar complaints. They also note the wards which produce the most complaints.

An initial impression was that the postcard scheme was an excellent one which is worth considering by other local authorities. It is interesting that even when complaints were actively sought (the refuse sack experiment) only 2,500 cards were returned from a total of 110,000 and of these, about 1000 related to the refuse sacks themselves, or were anonymous, abusive or hoax cards. The most impressive aspect of this system is that it invites the public to voice their complaints.

However, a reservation about this system is whether it is really useful for the more serious type of complaint. Mostly, it is used for matters of a fairly trivial nature, for example, street lamps and potholes. In the housing, planning and environmental health departments, the postcard system represented only a tiny minority of their complaints. In these departments, they already had established routes for complaints before this system was introduced, and these routes are still the method used.

The system is certainly viewed in terms of public relations, and the officers kept stressing the importance of personal contact. However, in a physical sense, this authority was one of the most unfriendly and "fortress" like visited, with a system of security passes which was unique in the fieldwork experience. While not denying that any attempt to allow consumers to voice their complaints must be welcomed, it must still be borne in mind that this does not, of itself, make the authority more open and accessible and ready to listen. As an

example, at the time the Sheffield Study fieldwork was being conducted, two tower blocks of flats in good structural order were to be blown up because the Conservative councillors wanted their town "to look pretty". The aim was to declare the borough a "tower-free zone", and only seven more blocks needed to be destroyed to complete the process. Besides making the town look pretty, the effect of this policy was to double the council house waiting list to five years, but this did not appear to worry the chairperson of the housing committee, who planned to tighten eligibility criteria. He did not believe people should live in council houses, but that "they should buy their own". One wonders how many postcard complaints were received in response to this!

Despite the drawbacks, the merits of the postcard system was that it was easy for a complaint to get into the system. One authority visited had a good procedure, once a complaint got into the system, but there were some doubts about the ease of getting into the complaints procedure and a suspicion that many of them never get beyond the department. This authority has specially printed complaints forms which are available at enquiry desks and area offices. These forms are only to be used, however, for serious complaints:

"The purpose of the form is to record complaints of a serious nature where it is clear that the complainant is aggrieved. It should not be used for recording complaints for which there is already a routine system available (e.g. housing maintenance); or, if it seems likely that the complaint can be dealt with at once and to the complainant's satisfaction by summoning the officer concerned directly. However, if in doubt you should invite the complainant to complete a complaints form" (Guidance for Staff Receiving Complaints).

The complaint form is acknowledged within seven days, and the complainant is informed of the name of the officer responsible for dealing with the complaint. The procedure was administered by the

Administration Department, but in effect they acted as no more than a postbox. The Sheffield Study research team felt that they should adopt a more active role, and follow up the complaint to ensure that the department responds, and that a satisfactory outcome for the complainant is achieved. In this respect the Chicago system, mentioned previously, had features which were an improvement on this one. For example, there was a computerised system of checking whether there had been a response, and if none had been received within 10 days, the matter was pursued. When faulty procedures have been identified, this should be followed up also. So, although there was a commitment to complaint handling, and a procedure designed to ensure that results were achieved, it would have been better if the Administration Department had been involved more actively in overseeing the system.

One procedure which is worthy of note, in terms of quality of investigation once the complaint has got into the system, was found in the north east of England. The drawback to this procedure is that its existence is not widely publicised, and is largely councillor stimulated. This lack of publicity was, it appears, because the officers were afraid of being "swamped" with complaints, an argument often advanced by officers during the Sheffield Study fieldwork for the absence of complaints procedures.

Once the complaint is within the system the office of the head of administration takes it over, and this department has one full time and one part time complaints officer. Complaints are often settled at this stage due to the intervention of these officers. If, however, the complainant is not satisfied the complaint is lodged before the complaint sub-committee, where the chief legal adviser submits a report containing the views of the complainant and the chief officer of the relevant department. The complainant, the relevant chief officer, and the referring councillor (if there is one) are invited to attend this meeting, and it is encouraging to note that at only one time since the system was set up has a complainant failed to attend.

The sub-committee will adopt one of two courses of action. Either it will make a decision after considering the evidence, and recommend a particular course of action, or it will ask for an in-depth examination of the complaint. This latter course of action is rare, but it is a valuable feature of the procedure.

Local Ombudsman complaints go through this system, and of course, there is nothing to prevent a complainant going to the Local Ombudsman after this stage of the procedure. However, it can also be used for serious or resistant complaints, and it is worth noting that the authority has an impressive Local Ombudsman record. In such a thorough procedure there will inevitably be some delay, and this feature has been criticised by the Local Ombudsman. However, it is difficult to see a solution to this problem, if serious complaints are to be dealt with thoroughly. I would agree with Whitmore (1970) in this respect:

"I personally can never accept the idea that fair procedures and high quality judicial review inevitably result in inefficiency. Perhaps there is some delay; but this seems to me to be a cheap price to pay for fairness in administration" (p481).

Of course, many complaints are dealt with expeditiously at departmental level, as an analysis of complaints received and their outcome over the past four years revealed. A commendable feature of the system is the genuinely independent and neutral role adopted by the administration department and sub-committee, and the complainants' claims have been vindicated on numerous occasions. This feature adds support to the view that, even with departmental procedures, there is value in having an authority-wide procedure.

An interesting feature of the procedure was that it was introduced after consultations with the trade unions, and it was agreed that no criticism of any individual officer would be made, nor any entry put on an officer's file, as a result of the investigation. If improper conduct is suspected, the investigation ceases while the disciplinary

procedure is invoked. Without these guarantees it would be difficult to conduct an effective investigation. To say that the Sheffield Study research team were impressed by this procedure would be an understatement. Certainly, the quality of the investigation matched that of the Local Ombudsman. This procedure did seem to present the optimum level of dispute resolution. Of course, only a minority of cases were dealt with at this level, but the very existence of such a procedure, and the possibility of a review at this level, can lead to the exercise of greater care in decision making.

The various good practices described give some indication of the kind of features which makes for good complaints procedures. Firstly, an independent element is useful, that is, the opportunity to have recourse to someone not involved in taking the original decision (see Birds and Graham 1988, p316). In this respect, a *centralised system* of handling complaints with the chief executive's department overseeing an authority-wide system is ideal. While recognising that chief officers are responsible for running their own departments, it is useful to have the chief executive as a neutral party, if departmental procedures fail to achieve satisfaction. Of course, the majority of complaints could be settled at departmental level, given adequate procedures.

Member involvement at a final stage for resistant complaints, in the form of, for example, a complaints sub-committee, also has advantages. Despite the fact that most complaints can be handled at officer level, in the final analysis, members are responsible for the running of the authority, and they have a duty to control quality. In addition, their involvement may also mean that a complaint can be examined in the larger context of policy review.

I would, of course, agree with Birds and Graham (1988), that the procedures themselves must be fair and effective (p316). This involves the complainant being given a fair hearing, and the opportunity to appear in person is an important aspect of this. It is also useful if the authority attempts to redress the inequality in

power between the complainant and the authority. Consumer advocates may be useful in some cases, for example, in social services, but in many cases the neutrality of the chief executive's departments may be sufficient.

The central role of the chief executive's office has been emphasised, but within this, it is worth emphasising the importance of the existence of a person who is responsible for complaints, which could be a special "complaints officer" or a specified officer who delegates responsibility. In Scotland, Watchman (1985) found that none of the authorities had a formal position of a complaints officer. In England, the Sheffield Study found that it was possible to identify such a role in some authorities, although only a small minority had a full-time complaints officer. Authorities did have officers whose job description would encompass this role, but the complaints with which they were involved were usually those which may result in Local Ombudsman complaints. The Sheffield Study concluded that it was preferable to have a specialist officer who could co-ordinate and supervise complaints, and ensure that a solution is found. Such a person could be named in council documents, and in publicity outlets.

An obvious, but frequently overlooked point, is that the more accessible the procedure, the more use it will be for consumers. The lack of publicity for complaints procedures has already been discussed, but the fact that most procedures involve complainants putting their complaints in writing may act as a deterrent for those who find it difficult to construct a clear and concise argument. This point has already been discussed in relation to ombudsman complaints, and there does seem to be an advantage in allowing oral complaints, with perhaps specially trained members of staff who could help commit the complaint into writing.

Sympathetic staff, are of course, very important in the whole process of complaint handling, and the attitude of staff must not be overlooked despite the emphasis on procedures. In this respect those authorities which have a commitment to providing initial and ongoing

training opportunities for officers at all levels must be congratulated, as should those which recognise the importance of involving trade unions. It is probably true to say that the culture of particular departments may have to change before there is a serious commitment to complaints handling. Leak's work (1986) has already been mentioned in previous chapters in this respect and more will be said about this in the ensuing chapters, but it is worth noting here that a commitment to giving reasons for decisions is useful in relation to this. Other developments which may improve matters are the moves towards decentralisation which may make the authority more accessible with neighbourhood and community officers helping to diffuse complaints. The procedures found in some planning departments for example, where negotiations take place with developers in advance of planning decisions may also prevent disputes arising, a matter which will be examined in Chapter 9.

#### Consumers and Complaints Procedures

This chapter began by looking at the relationship of the consumer to public services, and indicated why complaints procedures are a necessary part of this relationship. However, even with a complaints procedure which incorporated the good practices discussed, and aside from any problems of implementation, in order to complain, a person must perceive a problem. Thus, there must be initially a perceived entitlement to a service, which may have been refused, or, if granted, there must be a standard by which to measure the inadequacy of the service. Rawlings (1986) has pointed out that grievance machinery "is only one administrative method for ensuring that citizens are protected from poor levels of services", and that a complaints procedure "is interdependent with techniques such as codemaking, monitoring or audit" (p2).

As the Social Security Advisory Committee (1988) points out, the "measurement of performance in public sector services presents considerable difficulties" and that while "bare statistics on performance are one thing; the quality of service is another" (p39).

Original emphasis). Thus a low level of Local Ombudsman or departmental complaints cannot of itself be considered an indication of consumer satisfaction, as it could be due to ignorance, weakness or hopelessness. In order to try to unravel some of these issues it may be appropriate to mention something about consumer complaining behaviour.

Firstly, it should be noted that "empirical work on the sociology of complaining in Britain is underdeveloped" (Rawlings 1986, p10). Friedman (1974) too spoke of "our almost complete lack of knowledge about complaining" (p55). Friedman's study, carried out in 1969, found that the "courts of the land apparently are not the place where the citizen ..... looks for administrative justice" (pp9-10), but rather citizens appeal up the administrative hierarchy, or turn to elected representatives. His survey found that 75% of complainants had complained internally, and that it was the better educated and higher socio-economic classes which tended to complain more often and more successfully. He also noted the "squeaky wheel" syndrome, where the persistent complainers were the ones who obtained redress.

Despite the fact that there must be a complex relationship between the sense of dissatisfaction with a public service and the triggering of a grievance mechanism, little work has been done in this country since Friedman (see Moss 1980). In the U.S., research confirms Friedman's finding that complaining, along with participation in general, shows an "over-representation of upper-status groups in the participant population" (Verba and Nie 1973, p336).

It has been argued that this over-representation of the middle classes in complaining activity is "irrelevant as far as democratic values are concerned ..... as long as the opportunity for redress is equal for all persons and no barriers are erected against or inducements extended towards particular complainants" (Rosenblau 1974, p46). The Study on Federal Regulation (1977) makes the point that, as long as policymakers and the public realise that complaints are not necessarily a representative sample of problems and issues, agency



summaries of complaints can be an important tool in the regulatory process (p134).

Another study of consumer behaviour was conducted by Best and Andreasen (1976), again in the U.S. This was not a survey of behaviour in relation to public services, but was a study of reactions of urban households to purchases made in 34 common consumption categories. The study found that households complain in only about one third of instances in which they perceive purchasing shortcomings, and that people of low socio-economic status are less likely than those of higher status to perceive problems with their purchases, and to complain about problems they do notice (p33). The explanation for this is that these people "see themselves as abused by the system and as powerless: they may well expect goods and services to be of poor quality" (p33). Many also feel that "it is wrong or illegitimate to be a victim of unsatisfactory purchase transactions" (p37).

The study also found that complaining "is an activity that many consumers engage in reluctantly" (p102), and that complaining behaviour "follows a rational pattern" which is related to the transaction cost (p34). Thus, the cost of the purchases is the significant determinant of the likelihood that a complaint will be made about problems that are noticed. Consumers are also more likely to complain about clear cut issues, rather than those which involve possible conflicts in judgement or interpretation (p62), for example, as to whether there is poor design or poor workmanship. They are also more likely to complain where the "responsibility is relatively easy to pinpoint" (p56) and where they have some kind of bargaining strength, for example, the goods have been bought on credit, so that they can withhold payment.

The conclusion from the study is that complaining, being "a costly and rational endeavour", is not entered into lightly, and that it "takes significant additional trouble to increase the rate which perceived dissatisfaction is transformed into vocal complaining" (p68). Despite the limitations of this study (that is, that it was conducted in the

U.S. and dealt with private business organisations) there are lessons which are useful for local government. Firstly, it explodes the myth about being "swamped" with complaints; it reveals the rational nature of complaining; and it may indicate that certain groups of people need to be encouraged to complain, if they are not to feel that complaining is somehow illegitimate.

Although the Parliamentary Commissioner is not the best model for encouraging people to complain, a recent annual report (Parliamentary Commissioner for Administration 1988), found that in 49% of cases, the complaint against the department was wholly justified; in 40% of cases, while the main complaint was not upheld, it was necessary to criticise at least some aspects of the departments' handling of the matter; and only in 11% of cases was there no justification for the complaint (p26). Again, the Health Service Commissioner (1989) found that 61.4% of cases of complaint were justified (para 3).

These figures do not indicate that people pursue trivial and unjustified cases. Indeed, complaining is a stressful business, and not pursued lightly. Evidence from the Sheffield Study consumer survey revealed the feeling of despondency and rejection felt by many consumers who took the trouble to complain.

"It is not worth making a complaint. People making a complaint just get sent round in circles"

"We are fed up with making complaints. Nothing ever gets done if you make a complaint"

"I could not be bothered to keep ringing and complaining"

"The complaint was not followed up at all".

These are just some examples of the feeling of dissatisfaction in the way the authority in which the survey was conducted responded to complaints. These comments were surprising, given this particular authority's self-perception as an open and accessible one. There is evidence therefore that there is a submerged body of complaints and

dissatisfactions, and proper procedures may help to ensure that these problems are not overlooked.

Certainly, one of the findings from the Sheffield Study fieldwork, was that authorities had not really addressed themselves to the problem of what it was like to be a complainant. Of course, the majority of consumers are never likely to complain, and in the Sheffield Study consumer survey it was found that less than 30% of the sample said that they had ever had cause to complain against the council, and only 20% had in fact done so. It must, however, be borne in mind that the authority in which the consumer survey was conducted had a reputation for open government, had good procedures, and had good methods of publicity. Widdicombe (1986 Research Volume III, Table 3.9) found that 26% of the electorate had made a complaint to the council at some stage, and that the majority were dissatisfied with the outcome.

The volume of complaints within an authority could also be due, quite simply, to a lack of information. For example, a traveller on British Rail has a scheduled arrival time and can therefore judge whether there has been a shortfall, but a consumer of local authority services often has no such yardstick. How long is it reasonable for a student to wait before being informed about a discretionary award? What standards of care should an elderly person expect in a residential home? Barclay (1982) has pointed out that the absence of a common code of practice for social workers makes it difficult for a complainant "to prove that the ..... action was unreasonable as he would not be able to point to any generally accepted standard of reasonable practice" (p190).

In this respect the use of performance indicators, which have gained enormous momentum in many public services, could play an important role in enabling consumers to evaluate the standard of service delivery. However, it must be pointed out that the main motive for performance indicators was not consumerism, but they were "top-down" affairs by which politicians and senior officers could control expenditure, and the activities of lower level officials, the "street-

level" service deliverers (see Pollit 1986). The only place for consumers, therefore, was as the "eventual beneficiaries of the enhanced efficiency" which performance indicators were supposed to identify and encourage (Pollit 1988, p3). In fact, one of the most sophisticated local government performance planning and management systems has "no way that the dissenting opinions of citizens can enter the system" (Hobbs 1985, p12).

Pollit (1988, p4) notes that "consumerism" initiatives have tended to gravitate towards the cosmetic and "charm school" approaches rather than towards the idea of improved provision of information, direct consumer participation and power-sharing. This tendency has been noted in the NHS context, where consumerism is about "customer relations, not patients rights", a model which requires "little serious change but much public visibility" (Winkler 1987). There is similar concern in the context of local government (see Stewart and Clarke 1987, pp169-170; Rhodes 1987), although the privatised utilities seem to be addressing this problem. For example, the Gas Consumers Council (1989) recommend that companies publish details of the minimum standards of service customers can expect, not only to offer a basis of choice, but "as criteria against which customers can formulate complaints and seek redress should things go wrong" (p4).

Certainly, the Audit Commission (1986c) has recognised that existing performance indicators "tend to focus on what is easily quantifiable", and that "measuring the effectiveness, or quality, of services is much harder" (p5). The Commission also warns that performance indicators should not be presented as an end in themselves, but rather "they should always be used as signals for action, or further enquiry or both" (p7). They could also be used to empower citizens, if, for example, a performance indicator of "improving consumer information" offered consumer data which they could use to make real choices (Pollit 1988, p5). Pollit calls for performance measurement indicators which are "essentially participative and which are negotiated between service providers, service consumers, and the wider community", so that the recipients of public services are not just

"pleased" but "empowered" (Pollit 1988, p22). This is just another aspect of "effectiveness" which was discussed earlier in the chapter. The indicators used must measure something which is seen as desirable by the recipients of the service or citizens in general, otherwise there is no legitimacy for the policies which are being pursued.

#### Conclusion

The Sheffield Study found low levels of formal complaints procedures in local authorities, and, although in many cases their desirability and usefulness was acknowledged, there was some resistance to the idea that legislation should be used to implement them. Even when there were procedures they were usually perceived as an internal staff management function, but even on this model, there were deficiencies in their operation.

Only a small proportion give their procedures adequate publicity, and a number of authorities had excellent sounding procedures which had, in fact, never been used. Few authorities used complaints as a systematic form of quality control, with few departments having monitoring systems to check efficiency or identify administrative shortcomings. Although a number of chief officers thought that complaints procedures had advantages from the point of view of management efficiency, it is difficult to see how this could operate without some systematic analysis. The general view, then, was a system of largely informal complaint handling, which often achieved results because of sympathetic staff attitudes.

For reasons discussed in the introductory chapters and this one, local authorities need to have complaints procedures. The emphasis in this chapter has been in terms of management efficiency and consumer satisfaction. Indeed, as the Audit Commission (1988) has noted, councils "must respond to the changing demands of the electorate" (p6), as their customers are more demanding and less grateful; better informed and more able to articulate their demands; and will "no longer accept that the council knows best" (p3).

Alongside a more critical public, councils are also being called upon to be more efficient and issues relating to this have been discussed. Complaints procedures are useful in this context, as a device for management information, but, it should be borne in mind that the information is needed to see if the system is effective, which presupposes a set of goals which are to be fulfilled. Thus, it is not sufficient to equate good administration with cost effectiveness in purely financial terms, and some consumer input is needed also, to ensure that the goals themselves are adequate. An advantage of complaints procedures is that they give an opportunity to consider the subjective experience of consumers, which is essential in the public sector because "services, unlike manufactured goods, cannot be sampled and tested for quality" (LGTB 1988, p5). Complaints procedures are a method of quality control to ensure that services are up to standard.

Although the view from the various service areas surveyed in the Sheffield Study, and particularly from chief executives, was that complaints procedures were desirable, few wanted to see their introduction implemented by legislation. Despite evidence from the Sheffield Study that *complaints procedures would improve performance*, and despite attempts by the Local Ombudsman to make the absence of procedures for dealing with complaints evidence of maladministration, the Department of the Environment declined to introduce a statutory requirement for local authorities to have authority-wide complaints procedures, although there are specific areas (for example, in the Children Act 1989; in curriculum matters in education) where complaints procedures are required.

The importance of a central procedure, covering the whole authority must be emphasised, particularly since the Sheffield Study revealed that few departments had complaints procedures, and that there was a wide variation in the type of procedures available. Added to this was the finding that different service areas have very different views on the matter of complaints. This is a reflection of the growth and influence of professional groups, the dangers of which were recognised in the 1970s by Sharpe (1971), who maintained that the growth in the

power of professional groups was a function of the growth in the technical complexity of public services and the consequent specialisation of function (p252). This was seen, by Sharpe (1971), to present a potential threat to effective democratic government, as the "service gradually comes to serve objectives set by the professional group or groups running the service, rather than those of its recipients or society at large" (p252).

The issue of professional autonomy has been discussed in the chapter, but it is worth repeating Hannon's (1983a) observation that even an apparent lack of conflict within a service area "should not necessarily be attributed to any very high degree of satisfaction with provision" (p278). She sees it as a reflection of the control professions have on policy-making and in individual decisions, which "make the task of challenging or controlling the action of professions more difficult" (p278). It is for this reason, among others, that an authority-wide procedure is necessary, because as the Sheffield Study has indicated, such a procedure can involve a more neutral stance. Coupled with this is the recognition that the local authority has to be seen as a corporate whole, and as such, should ultimately have a corporate response to a problem.

However complaints procedures in themselves are not enough. They must be implemented, and this involves staff training, and in many cases, a change in the culture of the department. Complaints procedures are just part of the process of an all-embracing service for consumers. They are the end of the line in protecting consumer rights. In addition to complaints procedures there should be other mechanisms which may give consumers a voice, and which may reduce the necessity for complaining, for example, by the use of consultation processes, and by in-built appeal mechanisms. In this respect, Crawford's (1988) warnings of the dangers of examining complaints procedures in isolation from policy process and consultation devices is noted (p1). The following chapters examine in more detail two service areas, social services and planning, where some of these issues will be explored, and they should be seen in the context of the changes which

have occurred within local government in recent times. In this respect, it may be worth quoting the Audit Commission and Local Government Training Board, as they observe that:

"the essentially bureaucratic approach which has served local government well in the past is, in many ways, inadequate for coping with the upheavals of the 1980s and beyond. It has to be replaced by a new approach, which will need to be more responsive and flexible, placing greater emphasis on the value of people, both as clients and employees" (INLOGOV 1985, p9).

The Local Ombudsman has praised those councils which are responding to these changes, noting that it is some of the most "value for money"-conscious councils which have introduced excellent complaints procedures, and that while customer care may be 'buzz words' this approach "can only be good for the consumer and a factor likely to reduce complaints" (CLA Annual Report 1989/90, p30).



## CHAPTER 8 SOCIAL SERVICES DEPARTMENTS AND COMPLAINTS PROCEDURES

### Introduction

Some of the concerns relating to the relationship of consumers and the public services, as expressed in Chapter 7, are particularly relevant in social services departments. It is not just the case that in many situations the department is the monopoly supplier, but also that sometimes a client is compelled to receive a particular service. Added to this is the fact that much social services work clearly involves issues of "rights", not just allocation of resources, and the clients themselves may be particularly weak and vulnerable. These issues will be taken up in the chapter, but it should be emphasised that in such situations, it seems absolutely crucial that aggrieved consumers have an opportunity to express their grievances, quite aside from any use such procedures may have for monitoring performance.

The last chapter examined the extent of, and justifications for, a central authority-wide complaints procedure, and concluded that such procedures were essential. However, this does not obviate the need for departmental procedures, and although the last chapter did give some indication of the extent of departmental complaints procedures, this was not explored in any detail. What was evident, and has been mentioned, is that few service areas had such procedures, and that officers in the various service areas displayed distinctive departmental attitudes, irrespective of the type of authority in which they were situated.

These issues seemed worthy of further examination, but a detailed study of all the major service areas was considered too ambitious in a study of this kind, and therefore just two areas were chosen, social services and planning, in order to develop these issues. Social services were chosen because, although serving a minority of the population, the services they offer can have a vital impact on those they serve, who are often the most vulnerable members of society, for example children, the elderly and the physically and mentally

handicapped. Some examination of grievance redress in this area is therefore appropriate.

Planning departments, too, have a significant impact on the lives of consumers, although service delivery is usually of a less direct and less specific nature than in social services. Planning was also chosen because it is a service area which has consistently accounted for a large number of complaints at Local Ombudsman level (on average, over the years, about 30% of complaints to the Local Ombudsman concern planning matters). The personal social services, by comparison, has always accounted for much smaller numbers (less than 5%).

Both areas are heavily legislated and regulated, with widespread use of codes of guidance and central government regulation. For both areas there are elaborate appeal mechanisms built into the statutory controls, with the courts, tribunals and government departments playing a role. Planning departments are subject to fairly extensive formal mechanisms of appeal, yet the number of complaints to the ombudsman remains high. Social services departments are also subject to numerous protective mechanisms for the consumers of social services, but, by contrast, the number of complaints remains low. Does the difference in complaining behaviour reflect a different clientele; a different approach by the officers in the two areas; more satisfaction with the services offered; more member involvement in the complaining process? Given the significant impact on the lives of consumers played by both services, some explanation for their different complaint record will be sought. It will be interesting to see what role complaints procedures play and whether there are other mechanisms which reduce the necessity for complaining.

By concentrating on just two areas it enabled another theme to be explored, that is, the view that, although complaints procedures are vital, they are not enough in themselves, but they must be supplemented by good practice and procedures in all areas of work. By restricting the study to two areas, these could be explored in some detail, so that as well as looking at the extent of complaints

procedures, other mechanisms which reduce the necessity for complaining can be examined.

This chapter will look at social services departments, and it must be said at this stage that these departments proved to be a difficult area for research, partly because of the wide and varied services and client groups which they serve. The full range of functions covered by these departments can be found in Schedule I of the Local Authority Social Services Act 1970. The following gives a brief outline of these functions, which, now include the establishment and administration of residential homes for the elderly, adult training centres, community homes for children, day care centres and homes for the physically and mentally handicapped.

They also provide support services, such as home helps, which can be provided where a sick or expectant mother or disabled person cannot be adequately looked after, or where help is needed with housework, although they are now mainly involved with the elderly. Meals on wheels are also provided with the help of volunteers (WRVS), although the bulk of the catering staff and kitchen facilities are provided by local authorities. Other support services include attendance facilities for those living alone and laundry services.

Local authorities also provide social workers in their various roles, who are, to some extent, the link between the community and the department. It is they who have to exercise crucial statutory responsibilities and assess individual cases, in many cases acting as "gatekeepers" deciding on the allocation of scarce resources. Their role can be that of caseworker, exercising statutory duties in relation to children (for example deciding on suitable foster parents), the sick and disabled, or the elderly. They may also work in residential establishments, including hospitals. Their role and relationship with their clients and the local authority is not always clearly defined and there will be some discussion of this later in the chapter.

Social services also have responsibility for a range of client groups. Where children are concerned, there is a general responsibility for the welfare of children within their areas, and an appropriate branch of the department should be responsible for the general organisation of child care services. The various statutory duties in relation to children include help for children in difficulties, for example, those who have been orphaned or abandoned, neglected or abused, or those who are delinquent or lack proper parental supervision. In these cases the department has powers to take out care orders, or supervision orders, or arrange for children to be adopted or fostered. They can also provide community homes, and play a preventative role by arranging family support and financial help. They can provide day nurseries for children under 5, and are responsible for the registration of private day nurseries and child-minders.

Services for the elderly include the various domiciliary services previously mentioned, and the provision of residential accommodation. They have responsibilities for the registration and inspection of private residential homes, and can also provide day centres and clubs for the elderly.

Local authorities also provide services for the handicapped and disabled. Seebohm (1968) found that, although some disabled groups were adequately catered for, there were large groups for whom very little was done. The recommendation of the Seebohm report resulted in the Chronically Sick and Disabled Person's Act 1970, which required local authority social services departments to establish the numbers of disabled people within their areas and to make provision for them as necessary. Local authorities now have to provide help, where necessary, to adapt a persons home to his/her disability, and such aids as telephones and free or subsidised travel. They also provide centres where the disabled can be rehabilitated, for example, sheltered workshops, residential accommodation, daycare centres and domiciliary services and family support.

The Mental Health Act 1959 places duties on local authorities in relation to the mentally ill. A great deal of the treatment of mental patients is initiated by referrals from social workers, and the services provided by local authorities are based on the premise that the patient should, as far as possible, be cared for in the community and if possible, by the community. Severely sub-normal patients can be made the subject of guardianship orders, and local authorities can act as guardians. Social services departments are required to provide mental welfare officers and psychiatric social workers, and establishments such as day centres and clubs for the sub-normal, as well as residential training centres, where the need for them is shown to exist.

Because of the range of work undertaken by departments, it was decided to highlight only certain specific areas as illustrations of the issues concerning complaints procedures and good practices.

Another problem with researching this area is that the potential for conflict is not just in relation to resource allocation, but it also relates to the issue of clients' rights, a point which will be elaborated upon later in the chapter. There was also the added difficulty about confidentiality in this area which was compounded by what appeared to be a culture of closeted conduct, and a feeling of defensiveness among staff. This kind of attitude was also found by Berry (1988a), who noted that staff were concerned about their own protection, and often felt isolated "under pressure and under seige" (p16). Berry's research was conducted in 1986, but she notes the progress made in staff attitudes, so that in 1988 staff were more ready to acknowledge that clients may have legitimate grievances (p16). These issues, relating to the culture of professionalism among staff, will be discussed later in the chapter.

Despite these problems, it was felt that the Sheffield Study questionnaire responses (and there was a response rate of 68%), together with the interviews of officers, members, social workers and representatives of client groups, gave a fairly comprehensive picture

of complaints and complaining within these departments. Before examining these issues, I will discuss, briefly, the context in which these departments operate.

#### The Organisation of Social Services Departments

The Local Authority Social Services Act 1970 is responsible for the present organisation of social services departments, which was passed as a result of the Seebohm report (1968). A discussion of the history of British social services, and their development from the poor law, is not considered appropriate in a study of this kind. Historical accounts can be found in, for example, Fraser (1973), Packman (1975) and Parker (1965). The Seebohm committee, set up jointly by the Home Secretary, the Secretary of State for Education and Science, the Minister of Housing and Local Government and the Minister of Health, was to "review the organisation and responsibilities of the local authority personal social services in England and Wales, and to consider what changes are desirable to secure an effective family service" (Seebohm 1968, p11 para 1).

The committee found not only lack of resources and inadequately trained social workers, but also divided responsibility and organisational fragmentation. They illustrated the problem by the following example:

"The home help service, a day nursery, nursery school or residential nursery might all provide means whereby a motherless child could be cared for, providing in the first three instances the father was able to take charge at night. But these services are the responsibilities of three different committees and departments, which look at the problems from somewhat different points of view, have rather different methods of trying to solve it, and different orders of priority in deciding how much of their total resources should be devoted to the particular service required" (Seebohm 1968, p34 para 98).

Seebohm (1968) therefore argued the case for organisational change, recommending that all major local authorities should have a social services department to administer the various welfare services, including services for children and the elderly, as well as the handicapped and mentally ill, who were living as part of the family. There should be one central government department responsible for these new social services departments, and for overall planning and resources in social services.

The 1970 Act thus brought together a number of functions previously carried out by different authorities under various pieces of legislation. As a result they took over the work previously done by children's departments; welfare departments which had provided services for the elderly, the physically handicapped and the homeless; and local health departments, which had been concerned with the care of the mentally ill and mentally handicapped in the community and with the provision of the home help service. A new administrative framework was required, and a duty was placed on a local authority to set up a social services committee and appoint a director of social services to administer the statute and ensure that services were available to the public.

The act also made provision, nationally, for the training of social workers, with responsibility vested in the Central Council for Education and Training in Social Work, which was set up in 1971. Within the (then) DHSS, a local authorities social services division was formed under the Secretary of State for Social Services, and an independent, non-statutory body, the Personal Social Services Council, was appointed in 1973 to advise the Secretary of State. The Council was wound up in 1980, as a result of the government's public expenditure cuts, and part of its work, that relating to children, was transferred to other voluntary bodies. Incidentally, Seebohm (1968) had recommended a member to represent the consumer interest on this council (p145 para 641), but such a person was never appointed.

The revision of the local authority boundaries in 1974, as a result of the Local Government Act 1972, affected the organisation of the personal social services. The present position is that metropolitan districts, London boroughs and non-metropolitan counties have responsibilities for social services functions in England, making a total of 107 social services departments. These departments have adopted a variety of internal structural arrangements (for a fuller discussion of this see Hallett 1982, pp33-43). The Local Authority Social Services Act only stipulated that a committee and director should be appointed, and thus the internal structure is a matter of local decision. This has therefore led to a variety of arrangements, and this, together with a lack of uniformity in the terms used to describe different posts and units within departments, has complicated the task of categorising and comparing them.

Hallett (1982, p37) identifies two main models of organisational structure. Firstly, there is the functional model, where three or four assistant directors have responsibility for different spheres of the department's activities, for example fieldwork; residential and day care; administration; research and development. The second model involves devolution to defined geographical areas of the authority. These "divisions" contain all the various functional areas, and they usually have divisional directors or area directors. Hallett (1982) believes that potentially this model "raises the problems of territorial justice within an authority" (p37. Original emphasis), if, for example, one divisional body favours home helps and meals on wheels, at the expense of residential care. There are variations within these models. For example, within the functional model, the area teams are sometimes divided into larger divisions, forming a tier between senior management and area officers, but without the direct responsibility for services, as in model two. Although Widdicombe (1986) discusses the differences in structure and function of local government as a whole (pp 22-29), there is no discussion about the internal organisation of social services departments.



It was not possible to identify the organisational structures of the departments responding to the Sheffield Study questionnaire, and it is difficult to assess the most effective type of structure from the point of view of the consumer. I would therefore agree with the Audit Commission (1986b) which refers to the "many possible structures" in social services departments, commenting that:

"There is no consensus as to best practice. What matters is whether a structure works effectively in the local situation and that there are arrangements for assessing this" (p17).

This lack of consensus about structure was evident from a recent conference on complaints procedures in social services departments (AMA 1988). Some participants to the conference thought that a decentralised, or patch, system could best serve the needs of clients, as physical proximity resulted in a greater understanding of clients in their community. Others, however, thought that structures were less relevant than the philosophy, practices and processes of the department, and that physical proximity does not necessarily result in social workers and clients changing their views (p25).

What is in no doubt is that grievance procedures could be one method of assessment of the effectiveness of the structure while also providing a mechanism for raising the problem of "territorial justice" raised by Hallett (1982, p37). This was the conclusion from a conference organised by the Association of Metropolitan Authorities and the National Institute for Social Work (AMA 1988), that complaints procedures were crucial to protect rights, and that whatever administrative or territorial structure the department has, it needs to ensure that the structures "can facilitate an effective complaints system" (p25). Indeed, one of the advantages Seebohm (1968) identified with the establishment of a single social service department and committee was that it should make it easier "for complaints to be dealt with more effectively and for any abuses or neglect to be remedied" (p191 para 625). The reason for this is that the new structure would enable members to be freed from "the tyranny

of committee papers and the minutiae of administration" (p191 para 625), giving them time to devote themselves to personal contact with their constituents.

Nevertheless, the very size and diverse functions of these departments can create problems for clients, and there is a danger that the bureaucratic imperatives of the organisation could override the main function, which is the welfare of those in need. Seebohm (1968) saw the long term objectives of social services departments as involving more than work with groups of clients. Rather they should provide a "community-based and family oriented service available to all, reaching beyond the discovery and rescue of social casualties and enabling the greatest possible number of individuals to act reciprocally, giving and receiving services for the well being of the whole community" (p11 para 2). I would contend that complaints procedures are a part of this process.

#### The Consumer and Social Services Departments

The justification for complaints procedures has been discussed in the introductory chapters and in Chapter 7. Chapter 7 explored in more detail the particular relationship a consumer may have with the public sector which may make complaints procedures more appropriate there than in the private sector, although it was argued that monopoly suppliers in general should have some method of testing consumer satisfaction, because of the consumers' lack of choice. In this section I want to argue that these justifications are even more relevant for social services departments because of the type of services offered and the kinds of clients who may be served.

As was mentioned in Chapter 7, the "customer" model for public service consumers is not always appropriate, and, for social services, I would agree with Jowell (1988) that "market consumerism is .... of modest relevance to the experience of social service users" (p9). This is because the model depends on the ability to pay, whereas most social services users have little choice in the market place because of their

poverty, and indeed they become social services users often "because they cannot exercise the conventional freedom of consumers" (p9. Original emphasis). This is not to say that consumerism itself is of no value here, and Jowell argues that "participative consumerism", which "presupposes a shared commitment to service based on values of individuality and respect" (p9) should be the model used for social services departments.

Doyle (1988), too, argues that "consumerist 'philosophy' and social services values can converge" (p12), because in order to provide service for the public (which is the point of local authority activities), it is necessary to find out what people need, which involves "seeing the public as customers demanding high quality service and as citizens who are entitled to receive it" (p12). He recognises that choice is a difficult principle to apply to public services, and this is particularly true for social services clients, who often "do not want the service they are receiving" (p13). However, he argues that there should be some room for negotiation, so that services can be modified to meet individual needs.

This model of consumerism is a recognition that clients have rights, an idea that was "promoted by Seebohm, the Personal Social Services Council ..... then Barclay, and indeed by BASW" (see Berry 1988a, p17). For example, Seebohm (1968) speaks about the need for proper safeguards for the rights of children and parents where compulsory powers are used (p58 para 190; p79 para 269), and one of the conclusions of the Barclay report (1982) was that "steps should be taken to formalise the rights of clients who should as far as possible, participate in decisions, be made aware of their rights, receive information about decisions taken, have a channel of appeal or complaint and access to a second opinion" (p197). Moreover, "the person affected should have the right to know the grounds upon which decisions have been taken, or present his own case personally or through a representative, to question any disputed facts, and to appeal against the decision" (Barclay 1982, p188).

The Scottish Voluntary Organisation Group has endorsed this view, recommending that "there must be mechanisms to formalise and strengthen the rights of social work clients" (NISW 1984, p43). There was a similar expression of concern about the current state of policy and practice in relation to clients rights in England (NISW 1984, p119). In their discussion paper about clients rights in both the voluntary and statutory sectors, the National Council for Voluntary Organisations recommended that "particular concern should be shown to safeguard the residual rights of those who experience some deprivation of right when they become clients against their will" (NCVO 1984, p85).

The House of Commons Social Services Committee recommended that the DHSS should support efforts being made to reach an agreed model for complaints by clients about social services provision (Short Report 1984, para 365). And the DHSS itself in its Consultative Document "Review of Child Care Law" (DHSS 1985) stated that they had "no doubt that some machinery for the resolution of disagreements relating to children in care should be provided" (p9), adding that "not all local authorities yet have a satisfactory system for dealing with disputes and complaints" (p9). One of the recommendations in the document was that "every local authority should have a procedure for resolving disputes and complaints" for children in care (p20).

This recommendation has now become law by virtue of the Children Act 1989, which requires local authorities to establish a procedure for considering any representations (including complaints) made to them by a child being looked after by them, or by the child's parents, or someone else whom the authority considers has sufficient interest in the child's welfare (Section 26(3)). While applauding the introduction of such a procedure, I would agree with Bainham (1990) that perhaps the categories of those entitled to make representations are too restrictive, in that members of the extended family are not included, except at the discretion of the authority (p86). The Department of Health's consultation paper on "Representations" addresses this problem, recommending that local authorities should

have a clear policy on their discretionary powers, which takes into account the Act's "emphasis on participation in their decision making of all those persons who are significant to the child or can make a positive contribution to planning for the child's future" (DoH 1990a, para 11). The department urges a flexible approach so that "individuals are not overlooked or obliged to use other means to make their views or complaint known" (para 11).

This procedure will only affect children in care. So far as other clients are concerned, Sainsbury (1982) in his study, concluded that:

"Clients were, in effect, dependent on the limited expertise and vision of an individual worker, with little access to other help save on their own initiative and with virtually no appeal against inefficient service" (Sainsbury et al. 1982, p183).

Hallett (1982) noted the "absence of general, systematic and collective client participation in social services" which has meant that most clients, or their representatives, only "intervene sporadically and individually in relation to a particular perceived injustice" (p77), and Hill (1976) described the ad hoc methods of grievance redress in the personal social services, which usually consisted of complaining to a higher officer in the organisation, or to an M.P. or councillor (p149).

Many of these conclusions will be supported by evidence from the Sheffield Study, although, as will be indicated, there have been improvements since the completion of that study. An indication of this improvement was the calling of a conference in 1988 to discuss complaints procedures in social services departments, which was arranged because "Sheffield University, the National Consumer council, NISW, the Ombudsman and many others had been finding that there were things in the personal social services which should be put in order". (Harris 1988, p7).

There is no doubt that the very nature of the work undertaken by social services departments introduces potential for conflict. When deciding to remove a child from its parents, for example, there will be opposing views, as there may also be in the case of adoption or fostering. Similar problems occur in the case of compulsory removal of the mentally ill, disabled or elderly into hospital. These are difficult decisions, which by their nature invite conflict. One deputy director interviewed during the Sheffield Study described it as a case of "if you don't like the decision, you blame the messenger". In such situations lack of redress causes particular concern, because the decisions often affect the most vulnerable members of society.

Another area of potential conflict is in relation to the allocation of resources, especially in a situation where these resources may be scarce. For example, if a client is refused a home help or a place in a residential home, this will give cause for complaint, as will the refusal of aids and adaptations to handicapped people who consider themselves entitled to them. Barclay (1982) recognised the problem of insufficient resources in social services departments saying that "everywhere there is evidence of unmet need, some of it urgent" (p99). Seebohm (1968), too, found inadequate provision, both in terms of the range and quality of provision, due to a lack of resources, including staff, buildings and training provision. The committee found that local authorities were failing to meet the "needs for which, on the basis of duties placed on them by statute, they are clearly responsible" (p30 para 74).

This highlights one of the problems with the social workers' role. On the one hand they are seen as caring and concerned for the welfare of their clients, but they also have to protect and ration scarce resources and decide upon priorities. One deputy director, interviewed during the Sheffield Study, speaking of the "rationing of resources and services", said that it was inevitable that disputes would arise about the assessments made in allocating resources. Another officer in an inner London borough believed that most complaints were about the inadequate provision of services, but that

in many cases, this dissatisfaction with service provision develops into a rights issue. The main cause for complaint was a "shortage of resources amidst great poverty".

Even if resources are scarce, it would also be useful if people knew what level of allocation was appropriate or possible, so that they knew what to expect. This is also relevant in the context of judicial review on the basis that legitimate expectations have not been taken into account, as, in this area, it is difficult to know what expectations there may be. It is in this context therefore that the use of performance indicators by local authorities may be helpful (see Pollitt 1988, p21; Chapter 7 of this study) in giving consumers some indication of whether there was a cause for complaint. Barclay (1982) also criticises some local authorities who fail "to make explicit their criteria for allocation of resources (for example, in deciding whether or not an elderly person should have a telephone)" (p189).

Mayer and Timms (1970), in their study of client experiences, found that clients did not have any precise expectations as to what would, or should, happen, which is in contrast to the clearer imagery of what to expect from more conventional services (p65). If clients do not know what to expect, what standards are they to use in order to formulate a complaint? Hallett (1982) too makes the point that very few clients know the criteria for the allocation of resources, or indeed what resources may be available to help them. This "limits the opportunity for clients to appeal and thereby increases the power of "professionals" to give or withhold" (p80). The Audit Commission (1986b), in their manual on performance review, suggests that local authorities should be asking the following review question:

"Are there agreed criteria for the provision of different forms of care, and are quality standards laid down by the council for the various forms of provision?" (p32)

This question is specifically relating to the elderly, but there is no reason why it should not be asked of other areas too.

It is interesting that the Labour Party speaks about changing the culture of local government to orientate it towards quality, and in particular that local authorities should "set and publicise targets and standards for each service so users know what to expect" (Labour Party 1989, p44). Councils should be required to say what standard of performance residents are to expect for each service, "where to obtain further information, and how to complain" (p44). This would mean that people receiving meals-on-wheels or home helps would be given written statements setting out quality standards, variety and timing of these services. In addition there is a proposal to establish a Quality Commission responsible for promoting the quality of local government services, providing quality assurance standards for different services, and publishing guidelines and codes of practice covering matters such as service contracts and model complaints procedures.

Such information would be useful to consumers, and it may even reduce the numbers of complaints. In this respect, "supply and demand" charts, found in several of the large authorities' housing departments visited during the course of the Sheffield Study research, may prove useful for social services departments. In housing departments they are used to indicate those council estates which are the most pressurised in terms of housing waiting lists. Housing managers spoken to during the course of the Sheffield Study agreed that these systems had produced savings in management time, as this information had taken the pressure off the front of house staff in dealing with queries and complaints.

#### The Clients of Social Services Departments

The last section indicated that complaints procedures were essential in social services departments because of the types of clients served and the nature of the problems posed within these departments. In this section, I want to explore this in more detail, particularly in view of the fact that there is some evidence that few clients make complaints, which could indicate satisfaction with the service. The only reliable source of levels of complaints is the Local Ombudsman as



most authorities do not keep such statistics, and from the Local Ombudsman annual reports it can be seen that complaints about social services departments normally account for between 3% and 5% of the total number of complaints and formal investigations. There was an increase to 6% for formal investigations in 1987 and 1988, but this is thought to have been a result of the attention given in the news media to recent child abuse inquiries (CLA Annual Report 1987/1988, p8).

This does not, of itself, necessarily mean that there is a high level of satisfaction with social services departments, although the Sheffield Study consumer survey did find that 30% of respondents expressed satisfaction with social services departments, compared to 10% who said they were dissatisfied. This compared well to the other service areas, and is supported, to some extent, by Widdicombe's (1986) findings, where 37% of respondents said they were satisfied with "home helps for the elderly" (Research Volume III pp44-45). As this was the only service mentioned which related to social services work, it has limited application in testing satisfaction with the service as a whole. In Widdicombe's survey, 39% had no view at all, presumably because they had had no experience of this particular service. It may, therefore, be that the small number of complaints is a result of the relatively small number of people who are users of the service, compared to, say, housing and planning departments. This explanation is supported by the Sheffield Study consumer study, where only 19% of those surveyed had dealt with the social services department.

This explanation is not sufficient in itself, as other evidence suggests that there may also be a disturbingly high number of unvoiced complaints. The Sheffield Study questionnaire sent to social services departments, asked officers their view on why so few of the cases investigated by the ombudsman were about social services. Only one respondent gave the small number of users as a reason. The most popular view, which was held by 49% of the sample (17 respondents), was that the lack of complaints was due to the nature of clients who tended to be inarticulate, vulnerable and fearful. On the other hand,

24% (9 respondents) gave as the reason that social services departments are sympathetic, constructive and offer adequate safeguards. A further 14% thought the reason was because social services departments have more statutory protections than other departments, and 5% thought it was because there is consumer participation in decision making in social services departments.

However, during the Sheffield Study fieldwork, the view which came across the most strongly, was the vulnerable and fearful nature of clients, which made it most unlikely that they would complain. The feeling was that not only did clients tend to be "inarticulate and ignorant", but, that with the exception of elderly clients, few had even voted at elections or participated in the political process generally. This was echoed by some of the responses to the Sheffield Study consumer survey. Ten respondents claimed to have had cause to complain to the social services department, but only half of these actually made a complaint. The reasons for not complaining included:

"It was not worth it"

"I did not know you could complain"

"I did not think it was worth it as they never come to see you"

Only two of those who did complain thought that their complaint was satisfactorily resolved. The others complained that, for example:

"The buck was passed from one department to another. We just didn't get any help at all from them".

Or:

"I was not informed of my right to appeal on this problem"

During the Sheffield Study fieldwork, when exploring the types of complaints received, it was discovered that the majority were by relatives of old people, complaining about standards of care, or lack of resources, or by relatives of the physically handicapped, in connection with aids and adaptations for their homes or by relatives of deceased clients in relation to their property. Few complaints

came directly from the aggrieved consumers themselves. This lends support to the use of citizens' defenders or advocates, and the Local Ombudsman's initiative in encouraging voluntary organisations to make complaints on behalf of consumers, which will be discussed later.

Some of the responses to the Sheffield Study consumer survey indicated that there was confusion by consumers in relation to the limits of the responsibilities of social services departments, with a number of problems clearly within the province of the (then) DHSS, or even the housing department. A previous study (Glastonbury et al 1973) has also demonstrated the extent of public confusion or misunderstanding about social services departments and their activities. However, looked at from another perspective, many problems which should be attributed to social services departments are not perceived as such. Thus the complaints officer in one London borough said that they received very few complaints about social services specifically, but that social services tended to be involved in most cases when the case was investigated. In this respect it can be misleading to divide up the service functions too discretely.

The lack of complaints may be due, therefore, more to factors in relation to the type of consumer, rather than a lack of grounds for complaint. This is supported by a study in the U.S.A. (Best and Andreason 1976) of complaints in relation to common items of household expenditure. The study found that the strength with which households perceive problems relates to problem type. Problems that are simple to state, such as a breakage, or loss of property, are often perceived more strongly than are problems which may seem ambiguous, such as poor design or difficulty of use (p14). As a consequence, there was a low level of voicing complaints for medical, dental and legal services (p52), which probably reflects the reluctance of people to antagonise doctors and lawyers (see Soskis 1975).

As it was found that topics with the lowest voicing rates were the ones that involved differences of judgement or opinion, or an ambiguous situation, this could be an explanation for the low level of

complaints in social services, where many problems are created because of differences of opinion or judgement. The distinction between making a professional assessment and administrative actions can be equivocal, especially in social services departments, and this makes the intervention of the Local Ombudsman more problematic in this area than in other forms of local authority work (see Hallett 1982, p78).

There is also confusion and ambiguity about the standard of service or help which might be expected, making it difficult to complain about an alleged shortfall. Although Barclay (1982) referred to research findings where, according to one survey, 66% of clients confessed to be satisfied with the service compared to 20% who professed themselves dissatisfied (p67), with another survey finding 60% satisfaction and 22% dissatisfaction (p169), this may be due to low expectations. Surveys in 1972 and 1975 found that the majority of consumers said they had received some help, and almost two-thirds felt that they had received what they had hoped for. However, half of the clients who were over 65 said that they did not know what to expect from the department (Goldberg and Warburton 1979). Any "satisfaction" expressed by such clients therefore could be a reflection both of "low expectations on the part of the clients", together with "the kind of 'gratitude' which has also contributed to low levels of complaint against the health service, for example, about inconvenient hospital routines" (Hallett 1982, p77). Social services departments are therefore unlikely to have a high number of voiced complaints, as this depends upon "the degree to which a given topic can be considered manifest and not open to questions of judgement" (Best and Andreason 1976, p102). Best and Andreason (1976) also found that problem perception is lowest for households with low socio-economic status :

"Clearly, disadvantaged status, defined as membership in the lowest socio-economic status category is closely related to voicing behaviour. Those in disadvantaged status are less likely to voice complaints than are other members of the population". (p72).

The study therefore concludes that there is "significant under-representation of households with disadvantaged status among the total population of participants in the consumer complaint process" (p84). Similar conclusions have been reached by Friedman (1974) who found a tendency for the better educated and higher socio-economic classes to complain. Justice (1980) also found a strong middle class bias among complainants to the Local Ombudsman with over 70% being made by non-manual households (p60). Lewis and Gateshill (1978) also found that the Local Ombudsman was used more by the middle-class, mainly being owner occupiers bringing complaints against planning departments. The Sheffield Study Local Ombudsman complainants' survey endorses this finding, with 77% of respondents being owner-occupiers.

The Sheffield Study consumer survey found, not surprisingly, that of the 60 respondents who claimed to have dealt with the council's social services department, two thirds were council tenants and in social classes C2, D & E. Since the work of social services departments is to provide help and services to those in need in society, it is safe to assume that the clients will, in the main, be those of low socio-economic status, and this factor in itself could account for the low number of articulated complaints.

An interesting finding of Widdicombe's consumer survey was that "owner-occupiers had a considerably more positive evaluation of local government" than did those living in council accommodation, and there was "a fairly marked propensity for people in the higher social class groupings to be more satisfied with local government" (Widdicombe 1986, Research Volume III p39). MORI's survey for the Audit Commission (Audit Commission 1986a) had a similar finding, with higher satisfaction levels with local government in the higher social classes. Thus 69% of social classes A, B were satisfied, compared to 53% in C1, 51% in C2, and 53% in D, E (p4). Given, therefore, a lower level of satisfaction by the lower social classes, and given the reluctance of these people to complain, it appears that there is a high level of unvoiced complaints within social services.

The Best and Andreason study (1976) also found that consumers are more likely to complain when they have bargaining power (p40), for example, when they had not paid in full for an article. Consumers of social services, in many cases, could not be further removed from the concept of bargaining power. This is illustrated by an observation from an officer in a social services department, who was particularly concerned about children in care:

"If a child (in care) complains, he is sent out of the county; if the parents complain they have their access restricted; and if the social workers complain, they are sent on a CQSW".

During the Sheffield Study fieldwork, a case was quoted by a voluntary body dealing with mental health matters of a woman dropping a case against a local authority because, as a single parent with young children, she was completely dependent on the social services department. She was too frightened of pursuing a complaint which might jeopardise her income and other benefits.

This voluntary body claimed that the organisation was inundated with telephone calls in relation to mental health issues, a great number of which involved social services departments. Many of these calls involved allegations of serious breaches of procedure, but most were not pursued by the complainants. Many complaints were dropped once the complainant realised the difficulty and sheer effort involved in bringing a complaint. This factor alone deterred all but the most determined and resourceful complainants. Another case was cited where there was clear evidence of bad practice by a social worker, but the complainant felt reluctant to pursue the complaint because she was afraid of upsetting the department upon which she was so dependent, and which had so much influence over her life.

The U.S.A. study (Best and Andreason 1976) also found that there was a feeling that consumers did not want to get anyone into trouble (p44). During the Sheffield Study fieldwork this point was raised in relation to complaints in social services departments, where clients were

reluctant to get their social worker into trouble. The very fact that they had built up a relationship with their social worker made it difficult to complain. This point was made time and again: the relationship with the social worker prevented complaints, or, as one officer put it, "CQSW trained staff are good at diffusing potentially difficult situations".

One officer also thought that the use of the voluntary sector (e.g. WRVS for meals on wheels) made it difficult to complain because people think "it's a bit off to complain about a volunteer". Those in residential care are even more vulnerable. People are often worried about their relatives in private or voluntary residential care, but they tend not to complain because they do not want to jeopardise the position of someone in such a vulnerable situation.

For the reasons outlined in this section, clients of social services departments need to have clear procedures for the redress of grievances. Before looking at the extent of such procedures, I want to look at alternative, or additional avenues of redress in this area.

#### Additional Avenues for the Redress of Grievances

I have already examined in some detail the role that could be played by the Local Ombudsman, the courts and councillors in grievance redress (see Chapters 4, 5, 6). In this section, I want to look at these methods in relation to social services departments, to see if they pose particular problems for social services consumers, or, on the other hand, render departmental complaints procedures unnecessary.

Some decisions in social services departments are subject to appeal to the courts. The main area of judicial involvement is in child-care cases, where the decision to place a child in care is taken as a result of the judicial process, as are decisions about adoption. The Children Act 1989 gives new powers to the courts about access by parents to children in care. Section 34 raises a presumption of reasonable access for parents, and can only be refused with a court

order. The majority of respondents to the Sheffield Study questionnaire (75% 28) saw the advantages of statutory procedures which had an appeal mechanism to the courts, especially in the area of the assumption of parental rights and adoption orders. The main reason given for this was the independent element:

"There is a need for appeal to a body not directly involved in decision making".

"An appeal to an impartial body and the involvement of people outside the department reduces the likelihood of mistakes being covered up".

"Courts can be impartial, avoid 'cover-ups' and be seen to be just".

"The courts have the reputation of objective assessment of problems and are usually seen to be outside the system and as impartial as any organisation can be".

There was also a feeling that decisions by the courts could clarify ambiguous situations in a public forum:

"Appeals to Courts enables the establishment of a body of case law and precedent which may be used to guide subsequent decisions by authorities".

"They enable 'test cases' to clarify ambiguous legislation".

"Appeals to the courts enables case law to be established which can guide future practice".

Some also saw that it was important to check local authority power:

"The right of appeal to the courts is useful in certain limited circumstances concerning fundamental personal rights and liberties where the Authority should not have unfettered power".

The value of using the courts was also emphasised during the Sheffield Study fieldwork. In one authority the director maintained that most child-care cases are taken to court by the department because they are



looking for another judgement in the case. Although the procedure was time consuming and costly, it was a form of protection for the department. An officer in the court section of this department said that social workers liked to obtain court orders especially for older children, as it helped to alleviate any feelings of resentment that a child may have against its parents.

Although there was this favourable response to the intervention by the courts, only 8 (22%) respondents wanted to see the extension of the powers of the courts, preferring these being restricted to the situation where "individual rights are at risk".

The courts were thus seen as more useful than authority, or departmental, tribunals, because they are more authoritative, and to some extent, they relieved the authority of the burden of responsibility, as the decision was taken out of their hands. However, there is evidence that the courts are not exercising a judicial function in this area, and that in many cases they are merely "rubber stamping" decisions taken elsewhere. Harris and Timms (1988), in their study of procedures in relation to secure accommodation conclude that "the watchdog role intended for the juvenile courts had not proved effective" (p191), and that "court hearings frequently rubber stamp applications" for secure accommodation (p193). They observed that "the grounds for an authorisation being made are often the subject of only cursory consideration by the court" (p178), and that once the department decided to go for secure accommodation "there is a very good chance that authorisation will be granted" (p178). There was also concern about the "specially cursory attention given to renewal applications", which were "processed in a casual, even desultory manner" (p197). They compared this to the "entirely different situation of an application in the adult magistrates court for a remand in custody" (p197).

Similar concerns were expressed by the Butler-Sloss Inquiry (1988) into child abuse in Cleveland in 1987, that the magistrates were not exercising a judicial function (pp172-4) and that there was an

"acceptance of an automatic response by way of place of safety order to certain sets of facts" (p228). The Children Act 1989 will improve this situation. Legislation on place of safety orders is repealed, and a new Emergency Protection Order is introduced (sections 44-45). Under this order the court has to be satisfied that there is reasonable cause to believe that the child is likely to suffer "significant harm" before it can be removed from home.

The Department of Health, in their consultation paper (DoH 1990b), remind authorities that the emergency protection order is "an extremely serious step", and that it "must not be regarded - as sometimes was the case with place of safety orders - as a routine response to allegations of child abuse or as a first step to initiating care proceedings" (para 25). It is also recommended that the emergency protection order should name the child, or, if this is not possible, describe the child as closely as possible (para 27). It is also a matter for the court to decide on contact between the child and any named person (Children Act 1989, section 44[6][a]), and, subject to the courts directions, there is a general duty on the applicant for the emergency protection order to allow the child reasonable contact with a range of persons, including the parents (DoH 1990b, para 45).

Stevens (1989) believes that these new provisions will do away with "at home" hearings which were criticised in Butler-Sloss (p252). In addition, Robertson (1989) believes that the Children Act will mean that social services departments "will face the scrutiny of the courts in a much more rigorous way than previously" (p225), and that the Act "fundamentally, shifts the onus for review and decision making from closed, inaccessible case conference planning, review or briefing meetings held by social services departments to a much more open arena" (p225), and represents "the most radical shift towards reviewing the exercise of local authority power by the courts" (p225). This seems to be a move in the right direction, and must surely result in an improvement in practice within social services departments.

The Children Act 1989 does not allow decisions about children in care to be challenged in the courts, except in relation to contact with parents, and in this respect the government "has taken the review of Child Care Law's approach, which was that only certain decisions can be made by courts" (Hoggett 1989, p217). Harris and Timms (1988) also sound a note of caution about overstating "the capacity of the juvenile court to safeguard the child's rights" (p196), maintaining that to "place undue emphasis on the court's capacity to do so is to do the child a disservice by neglecting the more central role of bureaucratic and professional decision-making" (p196). Any reforms in the court process, for example longer hearings, better legal representation, greater involvement of the child, "however intrinsically desirable, would make little difference to the outcome of hearings" (p196). They advocate the greater use of independent social workers (p196), reasons to be given for decisions (p181) and better training for social workers (p189).

Again this problem is addressed in the Children Act 1989, with the emphasis on the provision of services to families with children in need being carefully planned and reviewed (DoH 1990c, para 1). Draft regulations made as a result of the Act place a new duty on authorities, in making arrangements to place a child, to draw up "an individual plan for the child", which is to be "reviewed (and amended as necessary) on a regular basis" (DoH 1990c, p2). The purpose of these planning arrangements is to "safeguard and promote the child's welfare" and "to prevent 'drift' and help to focus work with the family and child" (DoH 1990c, para 12). It is also suggested that "decisions and the reasons for them should be recorded and notifications sent to the appropriate people" (DoH 1990c, para 13). This approach recognises that it is within the departments themselves that changes have to be made.

Even though the courts will have a greater role to play in the future in relation to the child care functions of local authorities as a result of the Children Act 1989, this, in itself, may not be sufficient to safeguard the rights of children and their families.

However, the fact that such decisions will be subjected to independent scrutiny must improve the quality of decision making. Complaints procedures will still be needed for those areas not subject to appeal to the court, both in relation to childcare, and the other clients of social services departments.

The role of elected members in relation to social services departments will now be examined. Where decision making is concerned Maud (1967) recommended a clearer division of functions and responsibilities between councillors and officers and the adoption of "the guiding principle that issues are dealt with at the lowest level consistent with the nature of the problem" (p xiii, and paras 150-2). Most officers interviewed during the Sheffield Study fieldwork saw the member's role as deciding policy, and that they should leave the day to day matters to the officers. Seebohm (1968) noted the "delicate balance of the relationship between members and officers", observing that it must not be upset "by unnecessary interference on the part of the member with day to day administration and case work" (p192 para 626).

The delicacy of this balance was observed during the Sheffield Study fieldwork, where there was some resentment by officers if they thought that members were becoming too involved in what they considered to be their preserve. One assistant director thought that there were situations where members could add nothing to the decision making process, quoting the example of foster parenting, which he said should be a professional decision, and any appeal should be to an assistant director, or director.

"Members should establish policies and procedures and leave the rest to officers" was often said. While there was a feeling that members could have a role, in, for example, bus pass appeal panels, there was a feeling in some authorities that members "interfered a lot" and that this was "unfair and unhelpful". Members should agree the criteria for allocations etc, and only deal with exceptional cases. They should not be routinely involved, as their individualistic approach

could lead to unfairness. While it was conceded that sometimes members could act as a safeguard, it was the officials who made the "consistent professional judgments".

Even in a policy making situation, there has been criticism that councillors are out of touch with their clients, and with the situation on the ground. For example Jowell (1979) claims that "for most social workers engaged day-to-day in the direct effects of poverty, human distress, disability and insufficient public resources, the social services committee is a remote, little considered and normally uninformative entity" (p23). Self (1971), feeling that most councillors have little in common with the clients of social services, says that "the ability of local councillors effectively to represent the views of consumers of particular services is now regarded with a good deal of justified scepticism" (p276). Moreover he questions whether councillors can make a reasoned contribution to policy making, feeling that they are not very influential, because each particular service "is itself a 'policy sub-system' operating within a complex framework of central government regulation and guidance, professional practice and opinion, specialised pressure groups and a specialised press" (Self 1971, p272).

In one outer London borough visited during the Sheffield Study the officers interviewed had a particularly cynical attitude to case work by members, believing it came in three-yearly cycles: when councillors were not canvassing, they took up casework. However, the members in this authority adopted the attitude that "officers are employed to get it right in the first place". This was considered by the officers to be a more healthy attitude than that of some inner London borough councillors "who wanted to appoint the cleaners". This impression was borne out during the Sheffield Study fieldwork in one such authority, where the officer complained of too much member involvement in the minutia of administration, quoting as an example the fact that there was a member panel for the review of adoption cases.

This belief in the professionalism of social workers, which translates to "social workers know best", can be contrasted with the widespread belief, expressed by directors and assistant directors, that social workers were not adequately trained, and that there should be more government funding for continuing education and training. Harris and Timms (1988), in their concern about decision making in relation to secure accommodation recommend that the "DHSS initiates training opportunities for secure accommodation decision-makers, normally at Principal Officer/Assistant Director level" (p189). And in 1986, the Association of Directors of Social Services called for £30 million to be spent over 5 years to improve in-service training of social workers and managers (Guardian 10-4-86). Butler-Sloss (1988) also called for more training in the area of child sexual abuse (p225).

There was also some resentment expressed by officers during the Sheffield Study about the role of members in bringing individual complaints. Although members do not become involved in social services cases in anything like the way they do in housing, the resentment stems from a feeling that people were trying to by-pass agreed procedures by using elected members. A similar resentment was found by the DHSS Study (1978) when intervention was seen as special pleading, or an attempt to circumvent council policy. This may also be a reflection of the way social workers see their lines of accountability, as this study also found that social workers saw themselves as accountable either as professionals, directly to their clients, or to their team leaders and their area officers. No mention was made of elected members (DHSS 1978, pp217-8).

The role which members can play within a departmental complaints procedure will be looked at later in the chapter, but it was observed during the Sheffield Study fieldwork that a number of authorities did have special procedures for complaints by councillors or M.P.s. In some cases this was no more than copies of the correspondence going to the director or chair of social services, although in others this triggered a more formal procedure, and there was a time limit for responding to the letter. Not one authority visited used the social

services committee for individual cases, seeing them as concerned with policy matters, although there were sub-committees which dealt with particular complaints, for example, bus passes.

Despite the resentment felt by officers for what was considered to be interference by the members, it should be remembered that councillors are responsible for the delivery of services, and that therefore member involvement is necessary. I would endorse the view of the Short Report (1984) that:

"It is no good pretending that real policy is possible, unless at least the Chairman and lay councillors are able to assure themselves that all is well in individual cases, and that policies are being carried out".

Social workers could also play a part in informing clients of their rights when they have a grievance against the local authority. This can be seen as part of their role of bringing "a humanising face, a caring component into the increasingly large-scale welfare setting ... which ... can so easily slide into heartlessness and become alienated from the compassionate thought that fired its origination" (Davies 1985, p234). Indeed a number of officers in social services departments interviewed during the Sheffield Study accounted for the lack of complaints at Local Ombudsman level by the fact that clients had their own complaints officer - their social worker. However, this may only be the case if the client is in agreement with the social worker. Greater difficulties will arise when it is the actions of the social worker which gives rise to the sense of grievance. The Audit Commission (1986b) has recognised the possibility of conflict here, when it suggests that authorities should be asking what arrangements are made for the review of cases and for supervising social workers (p13).

Social workers can have conflicting roles; on the one hand, they want to provide help to their clients but they are also the gatekeepers to what are, in many cases, scarce resources. Social workers are often

in an impossible situation because of this dual relationship with local authority and client. Despite this difficult situation, the majority of respondents to the Sheffield Study survey (62%, 23) did not think there should be any provision for an aggrieved client to have access to an independent professional opinion. In this respect they are out of line with Barclay (1982) who considered that an aggrieved client must have access to either an independent professional opinion or to some objective yardstick as to what constitutes acceptable practice (p191).

Harris and Timms (1988) would also like to see the introduction of independent social workers in secure accommodation cases (p192). They found "considerable confusion as to the notion of independence", with many respondents to their survey acknowledging "the potential for role conflict in local authorities acting both as counsellor for the youngster and petitioner for secure accommodation" (p191). They believe that social workers, who "act both as employees and experts", seldom have any "undue difficulty in getting the decision they seek" (p177), and that is why an independent, professional opinion is essential.

There is the additional problem that the complaint may actually be about the social worker. When respondents to the Sheffield Study survey were asked whether there should be a separate procedure for complaints about the substance of a decision, and complaint about a social worker, the majority (57%, 21) said "no", although in most authorities a complaint about a social worker had to be in writing. There seemed to be a marked reluctance by officers to allow clients to change social workers seeing this as a problem that the social worker and the client had to work out themselves.

Despite the fact that much was made, during the Sheffield Study, of the social workers ability to diffuse potentially conflicting situations, Barclay (1982) found that some client groups "have come increasingly to regard social workers' with fear and suspicion believing that they now have excessive powers which they may use in



an arbitrary and unpredictable fashion" (p169). Although this view was far from universal among client groups, the fact that it exists at all is disturbing, and it lends even more support to the argument for complaints procedures.

Because of the relationship between the client and the social worker, there is a particular need for some method of resolving grievances against social workers. Of course, such a procedure should try to balance the rights of staff and complainants, and it is necessary, therefore, for such a procedure to fit in with staff grievance and disciplinary procedures. Adequate staff discussion must take place before such a procedure is introduced, a factor emphasised by the National Consumer Council, in their report on complaints procedures in social services departments (NCC 1985, p47). Without staff involvement, any procedure could suffer the same fate as the system set up in Northern Ireland to deal with children in residential care, where parents faced difficulties because of staff reluctance to implement it (see NCC 1985, p43). It is therefore heartening to note that at a national level the National Association of Local Government Officers has made clear its support for the introduction of complaints procedures (see AMA 1988, p19).

The final additional avenue of redress for complaints, which I want to look at in this section is the Local Ombudsman. The Local Ombudsman is concerned about maladministration, and so far as social services are concerned, the distinction between administrative matters and professional judgment is even more problematic than for the other service areas. Hallett (1982) summarises the problem as follows:

"Within social services departments, the distinction between professional judgement and administration can, at times, be equivocal. The consideration of an application from people wishing to act as foster or adoptive parent is but one instance when the work involves both making a professional assessment and also completing certain inquiries, and forms, which are essentially administrative matters" (p78).

Although at a recent conference on complaints procedures the Local Ombudsman made it clear that his interpretation of maladministration was broad enough to include professional decision making when appropriate (see AMA 1988, p21), evidence suggests that the ombudsman is reluctant to intervene in such cases. Indeed, one of the present ombudsman's reactions to complaints from parents or guardians about actions by social services which they consider excessive or overbearing, is that "there would need to be clear evidence before I would find maladministration where the officers genuinely and reasonably believed that their action was taken in the child's interest" (CLA Annual Report 1986, p10). In a report, concerning a complaint about compulsory admission into hospital (87/B/1308) the Local Ombudsman repeated this view:

"As Local Ombudsman I cannot substitute my judgement for that of a professional officer of the Council unless it was so unreasonable that no competent officer could reach such a decision. My concern, is whether the ASWs (Approved Social Workers) on each occasion followed the procedural requirements of both the law and good practice " (p23 para50).

There are, however, situations where the Local Ombudsman should be used, but is unable to intervene because the system has to be triggered by a formal complaint. The 1987/88 Annual Report cites the report of the Commission of Inquiry into the circumstances surrounding the death of Kimberley Carlile (A Child in Mind). The Commission considered what form child abuse inquiries might take in future, and suggested that, in certain cases, investigations might be conducted by the Local Ombudsman (CLA Annual Report 1987/88, p5). This could only be done by an amendment to Part III of the Local Government Act 1974.

Widdicombe (1986) too has recommended that the Local Ombudsman should be given new powers to investigate individual cases on their own initiative (p233 para 9.83), subject to the provisos that the Local Ombudsman would not pursue a case except where there were good grounds for concern, nor conduct an investigation into the general procedures

of an authority rather than an individual case where there was reason to suppose that injustice had occurred (p221 para 9.76). Widdicombe believed that this would go some way to redressing the present imbalance, whereby the majority of complainants are middle-class.

It may also help in the situation highlighted by Pat Thomas in the CLA Annual Report 1987/88, referring to the publicity about the number of children in the Cleveland area suspected of being subject to sexual abuse. She noted that although "Cleveland County Council is one of the local authorities within my jurisdiction, no complaints were made to me about a matter on which there was much attention in the press and on radio and television" (p29, para 4.12). The power to investigate on her own initiative would have allowed intervention in this case. The publicity surrounding the case was, she believes, "responsible for a rise in the number of complaints made .... from elsewhere about the way social services departments had carried out their responsibilities toward the younger, older and disadvantaged members of the community" (p29 para 4.12).

As has been mentioned in Chapter 5, discussions with relevant bodies during the course of the Sheffield Study supported Widdicombe's proposals. This would be a useful protection, given the vulnerability of children, especially young children who cannot complain on their own behalf, and has for some time been the view of the CLA (quoted here in response to the DHSS Consultation paper on Child Abuse Enquiries):

"the Local Ombudsmen would be better able to help in this sensitive field if they had the power (as the Commission had recommended) to investigate on their own initiative, without receiving a complaint, or at the request of a local authority" (CLA Annual Report 1986, p34).

Despite Widdicombe's (1986) arguments, the government has not been persuaded to support the recommendation that the Local Ombudsman be allowed to investigate on their own initiative, believing that the

Local Ombudsman "would lose goodwill and co-operation by acting, or appearing to act, as a general purpose watchdog" (Government Response to Widdicombe 1988, p30 para 6.31). It also seems unlikely that there will be the establishment of a Children's Ombudsman, as there is in Sweden, and Norway, with duties which include furthering the interests of children, and assessing the potential effect on children of government policies (see NCC 1985, p51).

One development which has taken place, and which would serve as a model for other authorities, is the establishment by Leicestershire County Council of a Children's Rights Officer, with duties to examine how council policies will effect children. This development will be examined later in the chapter. The Labour Party proposes the establishment of a Children's Commissioner along the Norwegian model, who would be independent, and whose role would be to "promote the interests of children in the private and public sector" (Labour Party 1989, p64). It is unlikely however, that there would be such an institution in the near future, and it would appear to be more useful at present to extend the powers of the existing Local Ombudsman.

The recent abolition of the member filter, allowing people to complain directly to the Local Ombudsman is one reform which will make the Local Ombudsman more accessible to those in need. Before this reform, any complaint by a young person would have had to be sponsored by an adult. The Local Ombudsman has now made it clear, as there was some confusion before, [confusion which still appears to exist as the Labour Party (1969) speaks about strengthening "the position of young people by giving them the same rights of access as adults to existing Ombudsmen" (p64)] that complaints received directly from a young person will be considered. Despite any practical problems they may face, there is no longer a requirement that a complaint has to be sponsored by an adult, and the Local Ombudsman "will consider a complaint from any young person provided he is satisfied that it is genuine" (letter from Secretary of the CLA to Editor "Social Work Today", 13 April 1988).

Time will tell whether the removal of the member filter has made it easier for clients in social services departments to complain, although there has been a rise in the number of cases referred to the Local Ombudsman concerning social services matters. The 1989/90 Annual Report of the Local Ombudsman shows a 31% increase in such complaints (CLA Annual Report 1989/90, p11). This increase is welcomed by the ombudsman, seeing it as evidence that "the door to remedies for alleged injustice is opening that bit wider", and that "the protective arm of the Local Ombudsman is reaching people ... who are powerless to do anything" about acts of maladministration (CLA Annual Report 1989/90, p5).

In addition, the Local Ombudsman has recently written to voluntary organisations (see CLA Annual Report 1988/89, p58), urging them to make complaints on behalf of their clients, who may be unable to make, or have difficulty in making, complaints. The Local Ombudsman is empowered to investigate such complaints by virtue of section 27(2) of the Local Government Act 1974. This could have the effect of highlighting previously "unvoiced" complaints, although the recent increase in complaints received concerning social services matters was not due to voluntary organisations referring complaints. The Local Ombudsman believes, however, that the letter to these organisations may have "encouraged them to recommend the Local Ombudsman service to their clients, who have then made complaints direct" (CLA Annual Report 1989/90, p12).

While serving useful purposes in many cases, these additional avenues of redress have some drawbacks, and, as far as the courts and Local Ombudsman are concerned, few would argue that these should be used only when internal methods have been exhausted. I want to turn now to an examination of complaints procedures in social services departments.

The Extent of Complaints Procedures

There can be little doubt of the value of complaints procedures in social services departments, and, indeed, the prevailing view seems to be "not only embarrassment at a lack of procedures, but also a determination to introduce procedures, and a readiness to acknowledge that clients may well have legitimate criticisms to make of services" (Berry 1988a, p6). Such a view has evolved since the conclusion of the Sheffield Study, although there have been calls for such procedures for a number of years. For example, the Short Report concluded that the "crucial nature of the decisions made every day by social workers has led to a widely perceived need for a system to provide for the possibility of complaint or appeal against decisions" (Short Report 1984, para 360).

The booklet issued by A Voice for the Child in Care points to the use of complaints procedures as "fail-safe" mechanisms, which balance the power of the social worker and the rights of clients (Wadcock and James 1984, p14). One of the respondents in the National Consumer Council survey on complaints procedures (NCC 1985) remarked that "complaints are an important way in which social services departments are accountable" (p5), a point which was made in the DHSS consultative paper on a complaints procedure for children in residential care and their parents:

"The basis of a complaints procedure within the public services is the recognition that users or potential users of the services may be justifiably concerned about the effectiveness of those services and the manner in which they are provided. They have the right and should be afforded an opportunity to make known their views to those who are in a position to take remedial action if appropriate" (N. I. DHSS 1983, p9 para 2.1).

The National Council for Voluntary Organisations believes that a complaints procedure would enhance the service because:

"for every client who pursues a complaint there will be many who recognise the value and the right to make a complaint if they ever felt they needed to, and that fact in itself adds to the dignity of the client" (NCVO 1984, p70).

As well as enhancing the service from a management point of view, complaints systems can be used as a method of quality control. Jarvis (1989a) bemoans the fact that "random grumbles may be commonplace but complaints systems have had a sluggish history in social services departments", pointing out that commercial enterprises "see rumbling dissatisfaction as the most dangerous form of negative advertising", but a good complaints procedure is "a smart way of quality control, harnessing the goodwill and future custom" (p16). The Audit Commission (1986b) have also emphasised the management role of complaints procedures, suggesting that complaints "can be used as a key indicator in the process of supervision of decisions or referrals, to minimise the risk of incorrect rejection or unnecessary acceptance of referred cases" (p17).

This section will examine the extent of such procedures, and is based on questionnaire responses from the Sheffield Study survey, supplemented by interviews of officers, social workers and members during the course of the Sheffield research. It is also based on a number of developments which have occurred since the completion of that research, and further fieldwork experience. The Sheffield Study survey questionnaire was fairly wide ranging in its scope, not only asking questions about internal complaints procedures, but also about specific aspects of social work practice, for example the conduct of case conferences, and about issues raised in the Barclay Report (1982).

In the Sheffield Study questionnaire, "complaint" was defined using the definition in the 1978 Code of Practice on Complaints Procedures issued by the Local Authority Associations in co-operation with the Commission for Local Administration in England (CLA 1978, para 1-2). During the Sheffield Study fieldwork some officers did raise the issue

of definition, maintaining that it was difficult to differentiate between something which is a complaint and something which is a part of a complicated social work process. This point was appreciated, but it was assumed that most respondents appreciated that the concern was to discover the procedures used for solving disputed issues and it was assumed that few people have real problems recognising a complaint, although they may wish to distinguish "serious" ones from the rest.

It must be recognised, however, that this can be a problematic area, and that a lawyer's view of a situation does not always coincide with a social workers. For example, the director of the social services department in a large metropolitan authority seemed reluctant to accept that a request from a client for a change of social worker, because the client did not like the action the social worker was taking, was a complaint. Nor did he think that a letter from a couple objecting to their child being placed on the Non-Accidental Injuries register was a complaint. I do not believe that too restrictive a definition of "complaint" is helpful, and I would agree with Doyle (1988) that if "you really want to listen to the voice of the consumer you have to be careful not to exclude representations which may seem trivial to your staff but which may indicate a real problem for the client or be a sign of a serious malfunction of the service" (p14).

Like the National Consumer Council research (NCC 1985), formal, as opposed to informal, procedures were not defined in the Sheffield Study questionnaire, but by formal was meant one which was written in a document and available to staff. The Sheffield Study fieldwork confirmed that this was how the question was interpreted. Of the 37 respondents to the questionnaire 49% (18) claimed to have formal complaints procedures which applied to all areas of work in the social services department. This compares with 56% of the 59 respondents in the National Consumer Council survey (NCC 1985). Another 16% (6) had formal procedures covering some areas of work: 4 related to children in care; one related to residential accommodation; one said that their procedure related to serious complaints only, which they defined in their procedure, the reason given for such differentiation being that



it "would be impractical to insist that all ..... complaints had to go through a formal procedure".

This section of the questionnaire was specifically about procedures used within the department for handling complaints and it may be that departments without formal complaints procedures do have an authority-wide procedure which can be used by dissatisfied consumers of the social services, as was the case in one of the authorities visited during the Sheffield Study fieldwork.

Altogether 79% (29) of respondents believed it was desirable to have formal written procedures for the resolution of complaints and 92% (34) agreed that it was preferable to try to resolve complaints within the authority, rather than relying on external agencies. The most common reasons for this view was that it made for better public relations and was quicker and more efficient.

The existence of formal complaints procedures does not however ensure that they are used, or even known about. Of the 24 authorities in the sample who had formal procedures, just over half (13) said they were publicised, but four of these can be discounted, because when asked to "specify in what ways it is publicised" they admitted that it was only publicised internally. (One of these four did add that staff were expected to tell clients!). How effective the publicity is in the other authorities is difficult to assess, but respondents did refer to posters and leaflets in council offices. In one authority, visited during fieldwork, the departmental complaints procedure was not widely known among the staff.

The National Consumer Council (NCC 1985) found from their survey that clients were informed of the procedure once they made a complaint (p31). This is borne out by the fieldwork for the Sheffield Study, where it became apparent that the persistent usually managed to find the information. Certainly the Sheffield Study found nothing to disagree with the Local Ombudsman's study, undertaken to see how local authorities had responded to the 1978 Code of Practice, which found

that "relatively few procedures were well publicised" (CLA Annual Report 1980, p15).

A minority of authorities publish booklets, usually for selected clients, informing them, inter alia, of their right to complain. For example, those entering residential care may receive such a booklet, with information about the procedure for complaints, as may children in care. One authority produces a social services handbook, which is a general guide to the services provided by the department, and which explains the procedure to be followed for complaints.

Of the 24 authorities with formal procedures, 5 said that the procedure specified that complaints were to be dealt with by officers only, one by members only and 18 by both officers and members. It is difficult to assess the extent of member involvement. There were authorities which had a right of appeal from the director of social services to a complaints/appeal panel, which consisted of members of the social services committee. Another authority had member involvement in cases about access to children in care, where decisions about termination and refusal of access were to be made by the director in consultation with the chair and vice-chair of the social services committee. This authority also had a parental rights sub-committee to monitor such cases. When the Children Act 1989 comes into force the courts can decide on issues of refusal or termination of access (Section 34). Local authorities will only be able to refuse parents reasonable contact with their child after obtaining a court order, or in an emergency for not more than seven days (section 34[6][b]).

It was also interesting to know how much member involvement there was in the informal procedures of local authorities. 68% (25) said that it was possible for complainants to appeal from the decisions of officers to the elected members of the council. Seven of these allowed appeals to the full social services committee and 17 were appeals to a special sub-committee.

The impression gained from the Sheffield Study fieldwork was that the replies to questions about member involvement reflected the view that it is always open to members to raise a matter at committee if they wish, but that such involvement rarely occurs and is not part of the institutional culture. The impression was that members on the whole do not become involved in individual cases like, for example, in housing matters. It seems that committee members are mainly involved in policy matters and not with individual cases, and this is considered to be their proper role (although for certain exceptional matters, for example, the allocation of bus passes, member involvement is welcomed). One director said "what do members know about schizophrenia?" a view which was endorsed by other officers who believed that their decisions were a matter of professional judgement, which should not be challenged by members:

"The members should establish the policies and procedures and leave the rest to the officers".

This view was also endorsed in the Leeways Inquiry Report, an independent inquiry set-up to look into the case of an officer-in-charge of a children's home in Lewisham who was convicted of various offences involving indecent photography of young children:

"In our view they (the elected members) should decide policy and how they want their objectives carried out. They should leave the carrying out of those policies to their officers. If those officers refuse or fail to do so then they have the power to discipline and ultimately to dismiss them" (Lewisham Social Services 1985, p114)

One officer was very outspoken on member involvement:

"The members interfere quite a lot ... but such case work can be unfair and unhelpful. Member's policy can vary from one extreme to another, whereas officers make the consistent professional judgement. They should agree the criteria for allocations etc.

and ONLY deal with exceptions. They should not be routinely involved".

The Social Services Teams study (DHSS 1978) also found resentment by social workers of councillor intervention, when it was seen as special pleading, or an attempt to circumvent council policy. It is not only social workers and officers who think this way. One chair of a large authority's housing committee thought that the "role of councillors was to frame policy and to check upon its day to day implementation by officers". She disliked too much discretion, and she was not just thinking in terms of housing departments when she said: "In a well run authority casework would be unnecessary".

However, the organisation "A Voice for the Child in Care" calls for more councillor involvement in decision making.

"You share responsibility for your authorities services to the public and therefore you are in a key position to change policies and influence decisions" (Wadcock and James 1984, p5).

Hill (1974) notes that there is "little evidence that most councillors wish to spend all their time on policy" (p85). Indeed Self (1971) suggests that few councillors have "the time, energy or perhaps ability" to make a reasoned contribution to policy-making (p272).

There is, too, evidence of an increase in councillor involvement, in, for example, child abuse cases. In East Sussex, decisions about returning children for whom the authority has assumed parental rights to parents is taken by councillors (see *Community Care* - January 1980 "Social Workers lose rights to councillors").

For the formal complaints procedure itself, 10 of the respondents had a tribunal-type hearing as the final stage of appeal. In 8 of these cases the final appeal was to elected members. Only one authority in the sample had an independent element, as well as elected members, on this final complaints body. This is surprising, as 57% (21) thought

that it was desirable to have an independent element in the final stage of a complaints procedure.

When asked about informal procedures, the majority (60%) allowed for the complaint to be dealt with by the director ultimately. However, a further five said that there was always a possibility that the director would hear a complaint, depending on the circumstances and seriousness of the problem. In other words, although not the standard response, it is always possible for the persistent to go to the director.

Again respondents admitted to the possibility of appealing to members in their informal procedures. 68% said that this was possible, but it is difficult to see if this is anything more than the recognised right of members to raise an issue in committee if they wish. Of the 25 who spoke of this possibility, 7 said there was the possibility to appeal to the full social services committee and 17 to a special sub-committee.

The conclusions from the survey and fieldwork was that few authorities had really applied their minds to the possibility of having procedures which were accessible, and that they were mainly defensive in nature, a view endorsed by Berry (1988a, p16) in her work on social services complaints procedures. Indeed, 70% of the respondents to the Sheffield Study survey said that they agreed with Barclay that "current channels for making a complaint or for lodging an appeal were at best inadequate" (Barclay 1982, p190 para 12.49). It is therefore, good to note the change in attitude since the Sheffield Study (see Berry 1988a, p16) and a renewed interest in complaints procedures, which was partly a result of the Sheffield research (see Harris 1988 p7).

As for using complaints for management information 70% of the sample (26 respondents) said that they had a system for the monitoring and logging of complaints, 19 of these keeping a special register, rather than recording them on particular case files. Of these 26, all of

them included in their system complaints made in writing, 25 included complaints made by an elected member and 24 included complaints made by telephone and in person. The National Consumer Council Survey found a variety of practice in relation to verbal complaints, with some complaints procedures making no reference to them, others stressing the importance of settling verbal complaints locally and others stating that verbal complaints should be processed in the same way as written ones (NCC 1985, p32).

It is important, especially in an area like social services, not to insist that complaints are put in writing. These figures therefore, show an encouraging response to verbal complaints. This positive approach was also revealed in some of the information received about particular complaints procedures, with some specifically mentioning verbal complaints:

"On receipt of any complaint, written, by telephone or in person, an entry will be made in the register"

Or, by implication verbal complaints are included:

"These procedures apply to all complaints arising from any source about the service"

"The Department will continue to receive complaints through any channel which the client feels is appropriate"

Some authorities make it clear to the public that it is not necessary to complain in writing:

"If you are still not satisfied, you should write to, or telephone ...."

"Write to the Director of Social Services or telephone for an appointment".

Despite the extensive logging of complaints, few departments make use of this by producing a statistical analysis of complaints. Only 19% (7) admitted to doing so, and one wonders how effective such a monitoring process is. The National Consumer Council survey produced a telling example of one authority with a complicated procedure for recording complaints which stipulated that quarterly statistics should be produced for the information of the directorate. Their reply to the NCC enquiry about the extent of use was "information unavailable" (NCC 1985, p. 34).

When those authorities who said they did a statistical analysis were contacted at the time of the Sheffield Study, two said that they did not do this; in one the person spoken to could not understand why she had answered "Yes" to this question, although she said it was a good idea, and perhaps they ought to do it; another said that the analysis was a bit crude, revealing only numbers and client groups, but not types of complaints. Two actually did produce statistics, but in neither case was this a high priority in the department. One respondent said they were supposed to produce them every year, but in practice it was not as often as this. They admitted that collection of the statistics was difficult, because a lot of complaints were handled at local level, and therefore the statistics themselves were a bit patchy. One authority was trying to improve its method of analysis. The analysis revealed particular areas or services in trouble, and it was presented to management. In this authority the report was supposed to be every six months, but was more likely to be once a year. The officer in this authority also admitted that the task of collection was difficult as information from a number of local offices had to be collated.

Even without such statistical analysis, a surprisingly high number of respondents (28, 76%) said that they used complaints as a method of reviewing their administrative procedures. This is clearly not done in a systematic way and must depend on particular complaints coming to the attention of key officers. However, the majority of respondents (24, 65%) saw the advantages of complaints procedures from the point

of view of management efficiency. Of these, 7 mentioned that such procedures helped to ensure a standardised uniform approach from the staff, while others spoke of such procedures creating staff awareness of their responsibility; clarifying boundaries and resulting in a definite conclusion; being useful monitoring devices for types of complaint and staff performance. This is a recognition of the positive role of complaints procedures, and their use as a resource by revealing weaknesses in the system. It is hoped that the Audit Commission's emphasis on the use of complaints as key indicators for some areas of work in social services departments will encourage local authorities to see the positive aspects of complaints procedures (See Audit Commission 1986b). Indeed, participants at a recent conference on complaints procedures in social services departments agreed that "systems and structures for the recording, processing, monitoring and resolving of complaints were crucial" (AMA 1988, p25).

Some of the bodies calling for complaints procedures set out models or checklists for the elements which should be embodied into a good complaints procedure (see, for example, NCVO 1984, pp68-9; Wadcock and James 1984, p3). I would agree with Doyle (1988) that it is best not to produce a single model procedure, but rather it is better to help authorities to develop their own policies, by raising important issues and generating suggestions which would be adapted to local needs and circumstances (p14). On any checklist of good practice, most of the authorities who responded to the Sheffield Study survey were deficient, especially in relation to publicity and the possibility of an independent element in the procedure.

This section has looked at departmental procedures, and while I would agree with Berry (1988a) that a departmental-wide procedure is necessary because "ultimately for such policies to be effective .... they should be available to every user to any local authority service" (p19), there were departments which had complaints procedures for particular areas of work. In the next section I will examine some of these to see how useful they are.



### Complaints Procedures in Specific Areas

Social services departments have a number of powers and duties in relation to the chronically sick and disabled. This often involves the exercise of discretionary powers in relation to resource allocation, which may and often does give rise to complaints. In a number of authorities visited during the Sheffield Study research, officers claimed that most of their complaints were about the inadequate provision of these services. It was admitted that departments were often unable to provide people with what they need, and that complaints arise because of the shortage of resources coupled with the poverty of the consumers. Some officers said that they were in the business of rationing resources and services, and that most of their disputes were about assessment of need.

The Chronically Sick and Disabled Persons Act 1970 places a duty on social services departments to inform themselves of the number of people with physical handicaps in their locality, and requires them to make help available when it is satisfied that such help is necessary in order to meet the needs of such people. "Need" is not defined in the act, and local authorities are left to set their own criteria for allocation of such "help".

The Sheffield Study fieldwork revealed that most of the complaints which departments receive are about aids and adaptations under the Act, the reason being that the consumers are "middle class and articulate". The National Consumer Council study (NCC 1985) found that 36 authorities (61%) have a complaints procedure for complaints under this Act (p30), and the Sheffield Study fieldwork revealed more general support for member involvement in this area, where the problem was one of resource allocation rather than professional judgement.

The Royal Association for Disability and Rehabilitation conducted a survey in 1980 of disabled people, asking for information about difficulty in obtaining services under the Act. They found that some authorities were failing to fulfil their clients requirements, and

complaints were concerned with the way need was assessed or the time it took to provide the assessment. This was a problem noted in some of the authorities visited during the Sheffield Study where the nationwide shortage of occupational therapists had led to problems of delay concerning adaptations of houses for the disabled. Those who received help complained about the cost of the service, or that the services were inadequate or unsuitable. The conclusion of the survey was that there was a pressing need for an appeal procedure for disabled persons dissatisfied with the assessment of need or service provided.

The Audit Commission (1986b) suggested that authorities should be finding ways of assessing what clients, carers and parents think about the services provided for the handicapped, and that complaints were one method of discovering this (p43). They also suggested that "disabled people may choose not to use unsatisfactory services and reasons should be sought for low take-up rates" (p56). Again, it is suggested that complaints can be used to monitor service delivery.

Residential care is another area where a specific complaint procedure would be useful, and in the Sheffield Study, it was decided to concentrate on questions and problems surrounding residential care for the elderly. The Residential Care Report (NISW 1988a) emphasised that people in residential care should be able to exercise "a positive choice over the combination of accommodation and personal services which they require", and in order to do this they need, among other things, "ways to appeal against inadequate, inappropriate or enforced services" so that they can be guarded against "being overwhelmed by the power of the service providers" (p26).

The National Consumer Council (NCC 1985), in their survey, found that 37 authorities (63%) had complaints procedures for residential homes for the elderly and handicapped (p27). They also cited examples of local authorities issuing booklets to residents with information about the home and references to complaints and queries (p28). During the Sheffield Study fieldwork such practices became evident. For example,

one authority issued a booklet which encourages residents to write directly to the director in a letter marked "personal" in the case of an unresolved complaint, or ask to see the official visitor from the committee, who visits the home each month.

Despite such booklets, and procedures, it became evident that complaints do not usually come from the elderly residents themselves, but rather from relatives or someone within the authority. Even so, there remains many submerged grievances since, however caring relatives might be, they are conscious that residents remain vulnerable, and that complaining might increase that vulnerability. Hallett (1982) also recognises that it is unlikely that externally imposed checks and controls can offer more than a slender hope of protection to some vulnerable residents in residential homes (p50). Because of this vulnerability, it has been recommended that all residents in residential homes should have a "citizen advocate or friend" (NCVO 1984, p75). The Residential Care Report makes a similar recommendation, suggesting that access to independent advocates may assist the elderly to overcome the fear of recrimination and victimisation (NISW 1988a, p187).

One authority visited during the Sheffield Study fieldwork had no procedure for complaints for the elderly in residential care, but said that councillors and officers regularly visited the homes and would receive complaints from residents. However, it was interesting to note that experience convinced them that this outlet was no longer satisfactory and they decided that a more formalised procedure for these types of complaints was needed. A study by the Centre for Policy on Ageing found that some of the authorities which had adopted the code of practice for residential homes, including the recommendations on complaints, seemed to have the best record in resolving disputes at the level of the home itself (Centre for Policy on Ageing 1984, p60).

It is interesting that staff in residential homes recognise the benefits of a simple, well publicised complaints procedure (NISW 1988a

p156). What they wanted was a procedure which would deal with the residents' fear of retribution, but would not contribute to the staffs' feeling of being subjected to constant criticism by "self-appointed vigilantes". There was a feeling that complaints may not be as frequent if there was more efficient monitoring of homes and tighter restrictions on who could run them (p157). The report itself recommends that there should be national guidelines for the inspection of residential homes, which "should give equal attention to standards of accommodation, quality of life and the qualifications of management and staff" (NISW 1988a, p59).

The Audit Commission (1986b) is also concerned about the standards of care given to the elderly, suggesting that councils should have "agreed criteria for the provision of different forms of care", and "quality standards laid down by the council for the various forms of provision" (p32). The key indicators, which the council should use to monitor service delivery in this area, are statements of standards and complaints.

The child-care aspect of local authority work is arguably the most contentious area, and this is an area where a complaints procedure would be useful. The contentious aspects of the admittance of a child into care are handled by the courts, and such intervention was seen as desirable by officers and social workers interviewed during the course of the Sheffield Study. The Children Act 1989 puts more onus on the courts in care cases, and local authorities will no longer be able to assume parental rights through council resolution (section 31). Only the court can make an order putting a child in the care of the local authority or under the supervision of the local authority. The Children Act 1989 also repeals the legislation on place of safety orders (which allows children in danger to be removed from their homes for up to 28 days), and replaces it with a new Emergency Protection Order, which the court will grant only if satisfied that there is reasonable cause to believe that the child is likely to suffer "significant harm". Such orders can initially be granted for eight days, but are extendable for seven days. Parents who are not present

when the order is made will be able to challenge it in court after 72 hours (sections 44, 45).

Once in care, the question of access to the child by parents and others having an interest becomes important. The DHSS issued a code of practice "Access to Children in Care" in 1983, which recommended, inter alia, that local authorities should have clear procedures to enable parents and other relatives to pursue complaints about access and to be able to ask for decisions to be reviewed (DHSS 1983a, para 28). The code recommends that directors of social services should consider cases involving termination or refusal of access (para 29) and that arrangements should be made for members to consider cases where the director cannot satisfy the complainant. Individual authorities are left to decide on the extent of member involvement (para 30).

The National Consumer Council (NCC 1985) found that 14 out of 59 respondents had no procedure for access to children in care (p24). The Sheffield Study survey results were more favourable, with all but one authority claiming to have adopted the DHSS code of practice. The fieldwork and additional documentation revealed a wide variety of good practice. One authority set up a parental rights sub-committee which monitors cases where access is terminated, refused, or substantially restricted. Some authorities have a right of appeal to the social services committee or a sub-committee, and others have the final appeal to the chair or vice-chair of the committee. Some authorities stress that the child's wishes should always be ascertained in access cases.

Despite these claims, the Local Ombudsman has recently criticised two authorities concerning their procedures about access to children in care (CLA Annual Report 1989/90, pp21-22). In one (88/A/1026), where the complainant was concerned about access to her grandchildren, the council did not have adequate arrangements for complaints, and the complainant was denied the opportunity to appeal to members, as was suggested by the DHSS code of practice (DHSS 1983a). The other council

(88/A/1235) was criticised because, although it had a formal complaints procedure, it did not provide for recourse to elected members.

The Children Act 1989 places greater emphasis on children in care maintaining contact with their parents, which may go some way to allaying the criticism by the European Court of Human Rights that English Law does not allow parents sufficient juridicial rights to have access to their children (see Stevens 1989). Section 34 provides for children in care to have reasonable contact with their parents or guardians, and only the court can restrict access, except in the case of short term emergencies, where the local authority can restrict access, but only for 7 days. Even in the case of Emergency Protection Orders, the Act provides that reasonable contact with parents should be allowed (Section 44[13]).

The Act also places a duty on local authorities to promote contact between a child and parents (Schedule 2, para 15[1]), and the Department of Health consultation paper reminds authorities that parental participation "is one of the key provisions of the Children Act 1989" and a non-custodial parent should be kept informed about changes in their child's placement (DoH 1990d, p23).

The Children Act 1989 also requires every local authority to establish a complaints procedure for children in care, their parents and foster parents (section 26[3]). The procedure must ensure that at least one person who is not a member or officer of the authority takes part in the procedure, and that complainants should be notified in writing of the decision reached and their reason for taking that decision and of any action which they have taken, or propose to take. The draft regulations (see DoH 1990a) provide for a two stage procedure, with an independent element at each stage (Annex B), and it is suggested that an independent element "will inspire confidence in the procedure" (DoH 1990a, para 9). The consultation paper also recognises that the benefit of such a complaints procedure is that it will illustrate "how policies translate into practice and highlight areas where authorities

should be more aware of the needs of individual clients and the community" (DoH 1990a, para 8).

Local authorities are also required to publicise their procedures (section 26[8]). The Department of Health recommends that the authority should "publicly announce the setting up of the procedure and invite the participation of service users, community groups and others", and that information should be available in the form of leaflets and posters. It is also suggested that the publicity material should present a positive view of the procedure (DoH 1990a, para 12).

Jervis (1989a) concludes that the inclusion of a complaints procedure for children in care in the Children Act is "the first step to consumer accountability" (p16), but warns that "without carefully thought out structures, complaints procedures can merely be a nominal gesture acting as a smokescreen" (p16). Robertson (1989) also warns that authorities may use the rule of sub-judice "an all-enveloping concept used readily by some authorities to stifle investigation of complaint" (p225). Nothing found in the fieldwork during the Sheffield Study would detract from such warnings, and certainly the procedures which were effective were those which were "woven into consumer oriented services" (Jervis 1989a, p16). Certainly the Department of Health is anxious to see a commitment to the representations procedure, and recommend an "unequivocal policy statement" on the scope and benefit of the procedure, together with staff training. The Department hopes that the procedure will be "viewed as another aspect of service provision to meet the needs of service users" (para 13).

Nevertheless, I would agree with Robertson (1989) that the various reforms introduced by the Children Act will raise expectations, and that this "will have enormous implications for social services departments who, for a long time have hidden behind self-protective veils of confusion, due, by and large, to widespread ignorance of their powers and responsibilities in the wider professional public" (p225). Hopefully, the end result will be that social services departments will become more accountable in all areas of their work.

This section has examined some areas where complaints procedures cover specific areas of social services work, and it can be concluded that they have a valuable role to play. However, all consumers should have some avenue of redress, and that is why there should also be a departmental procedure which will cover any type of complaint. Also, during the course of the Sheffield research it became obvious that, vital though internal complaints procedures may be, they are not enough in themselves unless they are supplemented by good practices and procedures in all areas of work. In the next section I will examine other procedures which need developing or improving in order to safeguard the interests of consumers of the social services.

#### Clients Rights in Social Services Departments

One of the conclusions from the recent conference on complaints procedures in social services departments was that "complaints procedures are important, but that they are insufficient in themselves" (AMA 1988, p26). This is especially true of the social services, where both clients and workers "are often in vulnerable 'private' situations which demand more than administrative appeal or complaint" (Timms and Timms 1982, pp34-35). Evidence suggests that these are the very clients who are reluctant to complain, but their interests must be protected, particularly as they "may also by virtue of disadvantage or handicap be in a poor position to fight for their rights, and in many instances they may be receiving attention from the agency against their wishes" (Barclay 1982, p187). In this section I want to look at particular areas of work where improvements could be made, or where good practices were observed during the Sheffield Study, which should go some way to protecting clients.

One area of concern is the conduct of case conferences, particularly in relation to children, and a number of problems with case conferences were identified during the course of the Sheffield Study. During that study it also became apparent that "case conference" was an extremely elastic concept, covering statutory reviews for children in care, cases of child abuse and even informal discussions among



social workers. Harris and Timms (1988) also noted that "consistently with the findings of other studies, the use of case conferences was variable" (p193). The Children's Legal Centre conducted a survey in 1983 on statutory six monthly reviews for children in care. They too discovered that the concept of "case conference" was nebulous and that there was no consensus among authorities about the distinction between case conferences and reviews. The only real distinction is that holding reviews is a statutory duty, while case conferences are discretionary (Children's Legal Centre 1983, p10).

In the Sheffield Study survey only three respondents claimed to allow child clients to attend case conferences as a matter of course, with 92% (34) allowing attendance sometimes, depending on the age and understanding of the child. As for representation, 21% (8) said that they always allowed it, and 60% (22) only allowed it in certain cases. A further 19% (7) did not allow representation in any circumstances. What was more surprising was that where case conferences involved adult clients only 13% (5) of authorities allowed attendance in all cases, the rest allowing it at the discretion of the authority, often exercising this discretion according to what was considered the client's best interests.

There is also evidence to suggest that case conferences and reviews are not central to the decision making process (see DHSS 1985b, p14,p32). This view was confirmed by remarks made by officers during the Sheffield Study that the important decisions are made elsewhere, social workers often using ad hoc case conferences as a means of providing support for a particular decision or action which they have already taken. It has been suggested that the nature and function of case conferences should be clarified, and that if they are intended to serve a decision making function, that decision should not be made elsewhere. I would endorse the recommendation of the National Council for Voluntary Organisations that:

"Agendas should be used at a case conference to clarify the purpose of the conference, individual roles, especially that of the client, and how information is to be shared" (NCVO 1984, p88).

The Children Act 1989 makes no explicit reference to families attending case conferences, despite the fact that the Family Rights Group put forward an amendment to ensure that parents had the right in principle to attend and to be kept fully in the picture (see Jervis 1989, p24). There is also no provision for the challenging in court of decisions about children once they are in care, and it is therefore important that there are procedures within the authority to challenge these decisions and there is "a desperate need for an advocacy system for children in care, independent of the authority" (Robertson 1989, p225).

This is also one of the recommendations from a Voice for the Child in Care, particularly in relation to secure accommodation (James 1987), and Harris and Timms (1988), who believe that an independent person at case conferences is a "minimum requirement of good child care practice" (p194). Harris and Timms (1988) also found that, in secure accommodation decisions, the courts frequently rubber-stamp applications, making "the role of case conferences in many cases a de facto decision-making body, whatever its formal status" (p193. Original emphasis). They maintain that a "strong interpretation of this by the European Court of Human Rights could lead to further difficulty for the British Government" (p193). These comments could also apply to the use of case-conferences in other areas of child-care, and there has been a call for a review of the "guidelines to local authorities in such a way as to reduce the secrecy of the hearings", and for "a study of the policy and practice of case studies in child care generally" (Harris and Timms 1988, p194). Such a study is long overdue.

Social services departments in effect admitted that their own procedures were not good enough, during the Sheffield Study research.

84% of respondents to the survey thought that case conferences could be improved, the majority calling for better information for clients, and client participation. Others said there should be more staff training and simplification of the procedure.

Another effective method of protecting clients rights is to give the necessary information, and this is especially so in social services departments.

"The client must be given an essential minimum of information, including information from records, as to what decisions have been taken about him, by whom and why" (Barclay 1982, p191).

The DHSS, in their circular on social services records, set out general principles governing the disclosure of information contained in social services files. Local authorities are asked to review their policy on access, and to formulate a procedure for handling requests for access to information. Although there is recognition that there will need to be restrictions on access in some cases, the circular stresses that this should be kept to a minimum: "the need to refuse requests from clients to know what is said about them in case records will arise only exceptionally" (DHSS 1983b, para 4).

The National Council for Voluntary Organisations (NCVO 1984) recommends that clients should be encouraged to participate in the construction of their records. Clients should have the opportunity to read the record of an interview and to comment upon it; there should be clear and simple procedures for clients to gain access to their records; there should be independent bodies to arbitrate in the case of disagreement (pp86-87). The Short Report (1984) believes that children are entitled to as much information as adults, and to know details of their past and families (para 357).

The National Consumer Council (NCC 1985) found that 59% of the respondents to their survey claimed to have complaints procedures covering access to records (p29). The impression gained on fieldwork

during the Sheffield Study indicates that this is an optimistic figure. Authorities visited either had no policy on access, or were wrestling with the problem of a procedure and policy. One officer interviewed confessed to there being a fundamental disagreement about access to files within the department. An officer in another authority said that all his staff agreed that people should see what was written about them, but the department was in a state of chaos about what sort of information could be disclosed. I would contend that access to information is vital, if clients rights are to be taken seriously.

An independent element in an appeals procedure is an effective way of protecting clients' rights. Barclay (1982) says that aggrieved clients "must have access either to an independent professional opinion or to some other objective yardstick as to what constitutes acceptable practice" (p91). The NCVO (1984) has also stressed the importance of an independent assessor or appeal body (p88).

In reply to a question on the Sheffield Study questionnaire about access to independent professional opinions for aggrieved clients, it was found that only one authority had provision for this in all cases. A further 11 (30%) had provision for this in some cases, at the discretion of the director, and the rest did not provide for it at all. Opinion was divided about whether complainants should have a right of appeal to an independent body, which would be able to review all aspects of the case.

The Children Act 1989 introduces the requirement for an independent element in the complaints procedure set up to hear complaints about children in care (section 26(4)) and this seems to be a step in the right direction. Also the use of an authority-wide complaints procedure, where departmental procedures had been exhausted, could introduce a semi-independent element into the complaints investigation (see Berry 1988a, p19). Another interesting idea suggested by Berry (1988a) was for authorities to collaborate in introducing complaints procedures, which may enable "the creation of linked posts of

investigating officers who could provide some additional element of independence in any investigation" (p19).

I have already mentioned the problems relating to case conferences. Another area of concern is the practice in relation to child-protection registers. There are no statutory provisions about such a register, which is described in a memorandum from the DHSS to Local Authorities in August 1980 as:

"a central register of children who have been or may be the victims of abuse and who are the subject of serious professional concern" (DHSS 1980).

The register is described as an administrative aid to professional workers in the field of child abuse, and it is to be treated as confidential. The memorandum states that:

"a decision to place a child's name on the register should only be taken at a case conference. Registration is essentially an agreement between agencies to co-ordinate their efforts in respect of a particular family, and it is therefore considered appropriate that the decision to register should be a joint one". (DHSS 1980).

There are around 40,000 children who have their names on child protection registers (see Jervis 1989b, p24), and although set up as a means of "co-ordinating services for vulnerable and seriously ill-treated children", registration is seen by the families concerned as "a shameful and stigmatising indictment of their conduct as parents", and the register has become "a bureaucratic repository of defensive social work" (Jervis 1989b, p24).

An entry is made on the register only after a case conference, and, as has previously been mentioned, there is no right for parents to attend such a conference, or even have their views represented. The Cleveland Inquiry found, not surprisingly, that "parents felt a strong

sense of grievance that conferences were making recommendations and decisions about them and their children without, as they saw it, their views being heard" (Butler-Sloss 1988, p58 para 4.32). One of the recommendations of the inquiry was that parents should be informed of case conferences and invited to attend for all or part of it, unless "in the view of the Chairman of the conference, their presence will preclude a full and proper consideration of the child's interests" (Butler-Sloss 1988, p246).

In situations where a case conference results in an application for a care order there is, at least, an opportunity for parents to raise their objections before the court. There is no such right of appeal in situations where the result is an entry on the "at risk" register. Indeed, in a recent case of judicial review, it was held that where children had been entered on the "at risk" register after a case conference at which the parents had not been permitted to attend, the parent had not lost a right nor been denied a legitimate expectation, and the barring from the meeting was not reviewable (R v Harrow London B.C. ex parte D(1988) LGR 41).

However, in another case the court held that local authorities are not free to exercise arbitrary control over the entry of names of alleged abusers on a child abuse register with total immunity from supervision by the court. This case (R v Norfolk County Council, ex parte M (1989) 2 All ER 359) was brought by a person who had been named as a suspected abuser by a case conference about which he had no prior warning, and to which he had no opportunity to present his case or object. But this was treated as a special situation, and the court accepted that a case conference which was deciding whether or not to place a name on the register as an abuser was not acting judicially, and therefore the rules of natural justice were not automatically applicable.

Because of the particular exceptional facts of this case certiorari was used to quash the case conference decision insofar as Mr M. was identified as a suspected abuser. Although the court did say that

there was a duty to act fairly, this was seen as a flexible concept, and cases involving a parent or other custodian may require different treatment to those involving a stranger. Whilst applauding the result in this case, it seems more concerned with the rights of third parties and strangers, and there does seem to be a case for appeal against registration.

Jervis (1989b) notes that other countries recognise the civil liberties aspect of registers and have them governed by legislation (p24). For example, in Canada an appeal against registration can be made by application to a court, whereas here the only route is through judicial review. Such a review can only order the decision to be made again, but cannot overturn it. This is an area of concern not addressed in the Children Act 1989, nor does the Act include an explicit reference to parents attending case conferences, despite the fact that there appears to be an "inarguable case for families to have general access" to them (Jervis 1989b, p24). This is an area where some external review is necessary, in order to safeguard clients rights, and, as was discussed in Chapter 6, the possibility of review by the court can effect the quality of decision making.

This section has explained some areas of social services departments work where improvements in procedures are needed in order that clients' rights may be protected. With such improvements there may, indeed, be fewer complaints. The point has been well made previously that one cannot impose a complaints procedure and expect the whole culture of the department to change, and that is why improvements in the areas just discussed should indicate a commitment to the clients interests. In this respect the Children's Rights Service, introduced recently by Leicestershire County Council social services department, is to be applauded. This is an attempt to change the culture within the department and change staff attitudes. It is not just a complaints procedure, but a whole rights service, headed by a children's rights officer (CRO), which is available for staff as well as children and their carers. It was introduced only after extensive consultations with trade unions and professional bodies, and with the

help of the National Children's Bureau, which is giving it publicity and support.

Part of the job description of the CRO is to "promote and develop the rights and interests of children in care in all aspects of child care policy, planning and practice", and it is expected therefore that officers and elected members acknowledge and support the discretionary aspects of the job. It is thus seen as inappropriate to restrict his access to information, reports, key meetings and key personnel when he is attempting to investigate or resolve a complaint.

The CRO is not just available to children and young people in care. Staff too can seek advice on aspects of child care law, the existing policies of the authority and the practice guidelines of government departments. This part of the service is intended to provide a framework to enable staff to be familiar with the "rights" implications, so that they can bear this in mind when they make their decisions.

The CRO is located in the social services department, and he has direct accountability to one of the deputy directors, but is independent from the rest of the structure. He sees that his ultimate responsibility "through the authority of the elected members .... is to children in care", and he would therefore be unable to support policies, planning or practices not considered to be in the interests of children in care. He therefore has a wide discretion for determining the matters and policies which raise children's rights issues.

The complaints procedure itself is a three-stage process. The first stage (notification) requires the CRO to make "all reasonable attempts to secure an informal resolution", which will normally involve negotiating with the parties concerned and ensuring that they are aware of the young person's rights. An attempt is made to explore the potential for settling the grievance, within existing procedures, and



there have already been a number of cases where this first stage has been implemented to good effect.

The second stage (registration) is used if the first stage fails to resolve the difficulty, when the complaint is "registered" with the director of social services by means of a complaints form, if required. This is a more formal process, which can involve written submissions from interested parties and discussion by the director with those people identified as the principals involved. He can also appoint someone, who is independent of any case or management responsibilities for these principals, to carry out further investigation and report their findings and recommendations to him. It is for the director to determine the outcome of the complaint, and this is to be done within eight weeks of the complaint first being registered.

If the child or young person in care remains dissatisfied, the third stage (review) comes into operation. The review will be carried out by a panel of three elected members from the personal services sub-committee and one independent representative, not an employee of the local authority, who will be chosen by the chief executive and director of social services. The hearing is to take place within one month of its being lodged, and the complainant, director and their advisors will be allowed to attend. This right of review is only available in cases where there has been no previous referral to a panel or committee of elected members, for example, a complaint about access, parental rights resolutions, adoption. For the purpose of this procedure, its decision is final.

The procedure is being implemented by a series of training courses, and there is a commitment to mutual and ongoing training, with the department organising a number of one-day training courses for staff at all levels, so that they will be familiar with the aims and objectives of the service. In the area of recruitment, when a child care related post is advertised, prospective candidates are informed of the child care service. The success of this approach is evidenced

by the fact that the procedure is being used by staff, is viewed in a positive way, and is seen as seeking to protect legitimate rights. This approach should be a model for other authorities.

An important feature of the scheme is that the CRO is not part of the departmental hierarchy, so he can be detached and independent. He believes that it is important that the decision to set up the service came from elected members, as part of their concern for the welfare of children in their care, and not from officers who were "suddenly getting into consumerism". Because of this commitment from the members, if there were a problem, the CRO would go to them for support. He believes that they have provided invaluable support, in particular in relation to any attempts there may have been by officers to sabotage the procedure.

The outcome of the Leicestershire development is being watched with interest, and although it has not yet been evaluated, the experience so far adds support to the view adopted in this study, that in order to be effective there has to be a commitment to changing departmental culture, so that the procedure is seen in a positive way, and the rights it seeks to protect are seen as legitimate.

### Conclusions

The Sheffield Study found a disturbing lack of complaints procedures in social services departments, and a concern that even when procedures did exist they were probably not used by dissatisfied clients. As well as a lack of complaints procedures, the Sheffield Study also highlighted some areas of work where procedures needed to be introduced, in order to safeguard clients' rights.

What was even more disturbing about social services departments was the culture that the professionals know best, and that to suggest that they may be failing their clients by not having complaints procedures was somehow undermining their work. As an example, the Local Ombudsman, concerned about the lack of complaints to the ombudsman,

and as a result of the findings of the Sheffield Study, circulated all social services departments, urging them to review their arrangements. The response from social services departments was not only defensive, but attacked the findings of the study, and claimed that social services were far better than the other service areas.

Such a response misses the point that, even if there are procedures, the nature of the clients in social services departments may mean that there are dissatisfactions and grievances which never come to the surface. It is precisely because of this that the secretary to the Local Ombudsman has recently written to voluntary organisations concerning complaints about social services departments, urging them to make complaints on behalf of clients (see CLA Annual Report 1988/89, p58), and why the Local Ombudsmen have always maintained that they ought to be able to investigate on their own initiative, without a complaint being referred to them.

Happily, there are signs that the defensive attitudes within social services departments are changing, one such sign being the conference organised by the National Institute for Social Work and the Association of Metropolitan Authorities about complaints procedures in the social services (see AMA 1988). This was organised as a direct response to the Sheffield Study findings, and it was acknowledged that there was no room for complacency, and that departments had to "recognise inadequacy and deal with it" (p7). The whole tenor of the proceedings from the conference is an emphasis on clients' rights and a move away from a paternalistic attitude, so that contributors spoke about "rights of citizenship ... natural justice and ... rights to access to services" (Harris 1988, p8). Berry (1988b) too speaks about the need for "commitment to creating respect and dignity for the rights and responsibilities of those who receive and those who provide social services" (p28).

The general view was that there must be a change in staff attitudes, an acknowledgement that social workers do not always know best and a need for managers "to make an unambiguous commitment to complaints

policies" (Berry 1988a, p18). Time will tell whether these views are translated into action, but that there is a commitment to change seems evident, and I can only endorse the views expressed. It is also worth pointing out that, while "consumerism" may not be so easily incorporated into the work of social services departments, one advantage of this new approach within local authorities is that the emphasis is on customer care, which must improve the rights of users of these services.

## CHAPTER 9 PLANNING DEPARTMENTS AND COMPLAINTS PROCEDURES

### Introduction

Having looked, in some detail, at the use of complaints procedures in social services departments, I will now turn to an examination of planning departments. As has already been mentioned, these two areas of local authority activity were chosen for more detailed study, because, although both areas have a significant impact on the lives of consumers, and both areas are heavily legislated and regulated and have a number of appeal mechanisms built into the statutory controls, they have very different experiences in relation to complaints. Social services account for only a small percentage of the Local Ombudsman's workload, whereas planning complaints account for about one third of ombudsman complaints (see CLA Annual Reports), a proportion which has remained fairly consistent over the last few years. Such a discrepancy between the two areas cannot be a function of the degree of regulatory framework, so other explanations will be explored, for example, the types of complaints and complainants. It may indeed be a reflection of the context in which the two areas operate, and the internal avenues of complaint available to those aggrieved.

The work undertaken during the Sheffield Study pointed to the advantages of other procedures, which are outside the regulatory framework, as a means of reducing conflict, in particular, the commitment to negotiation by some authorities. Details will be given of this in this chapter. There are also the procedures used for consultation and participation. However, it is difficult to make strong recommendations about these practices, as, in a project of this kind, the resources were not available to develop this area in as much detail as for social services. Despite this, by looking at the questionnaire returns, interviewing planning officers and members, looking at files in planning departments and in the Local Ombudsman's office, it was possible to obtain an overview of the nature of complaints in planning departments. What did become evident was that

there were some persistent complainants, and that the opportunity to have another look at the problem, perhaps through the mechanism of a complaints procedure would have helped.

#### The Context of Planning Departments

I do not propose to discuss the historical context of town and country planning (for a discussion of this, see Ashworth 1954), but it should be noted that the present law on planning originated in the 1947 Town and County Planning Act, which came into force on the 1st July 1948, and which contained "some of the most drastic and far reaching provisions ever enacted affecting the ownership of land . . . . and the liberty of an owner to develop and use his land as he thinks fit" (Heap 1987, p12). This act was amended by subsequent acts in 1951, 1953, 1954 and 1959, which were later consolidated in the Town and County Planning Act 1962. The principal act now relating to town and county planning in England and Wales is the Town and County Planning Act 1971, which in turn has been amended, most recently by the Housing and Planning Act 1986. (For a detailed discussion of planning law, see Heap 1987).

These acts are administered by the local planning authority for each local government area, and the effect of the Local Government Act 1972 was to make every county council and every district council a planning authority in its own right. When the Greater London Council and the metropolitan counties were abolished on the 1st April 1986, powers were transferred to the London boroughs (in Greater London) and the metropolitan districts.

It is now only in shire counties where there are two local planning authorities (county planning authority and district planning authority) for every piece of land, although shire counties have limited responsibilities in the area of development control. Since 1980, all planning applications except those relating to mineral extraction and operations and waste disposal matters are to be decided by the district planning authority (Local Government Planning and Land

Act 1980, section 86[2]). The district authority will only consult the county on certain applications relating to the following: land the county intends to develop; matters which conflict with the policies or general proposals in an approved, submitted or proposed structure plan; a universal extraction area (section 86[4]). In these cases, applications are submitted to the district council who then forward the relevant applications to the county. Even in these applications a county authority may waive the requirement for consultation (section 86[3]). These changes were introduced in an attempt to reduce the confusion about responsibilities for certain planning applications, as there were areas of overlapping responsibilities, which were often a source of conflict.

Parish councils are not local planning authorities, but they are entitled to be consulted about certain applications for planning permission to carry out development of land in their areas (Local Government Act 1972, Schedule 16, para 20, and Town and County Planning General Development Order 1977 Article 17).

Under the old Town and County Planning Act 1947, the Minister of Town and County Planning was the central authority for the administration of land planning throughout England and Wales, having a duty to secure "consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales" (Minister of Town and County Planning Act 1943, section 1). Now all matters relating to town and county planning in England and Wales are handled by the Secretary of State for the Environment.

I have already mentioned the fact that planning has a significant impact on the lives of consumers, a view which is endorsed by the Audit Commission which speaks about the impact of planning on the public being "profound", and "far greater than its expenditure might suggest", observing that the "total planning process is fundamental to the overall vision of the local authority and the council's strategy for the future" (Audit Commission 1986c, p23).

An important aspect of the planning authorities' work is the drawing up of development plans, which indicate the planning proposals for particular areas. The counties are responsible for drawing up structure plans which consist of statements of broad policy, the object of which is to "sketch out the trends and tendencies, to lay down general lines and to show broadly and without detail how development could shape up within the area of the structure plan" (Heap 1987, p 73). Districts draw up Local Plans (Town and County Planning Act 1971, sections 11-15B), which are prepared in line with the general objectives of the structure plan.

With the abolition of the metropolitan county councils, a new unitary development plan was introduced for metropolitan districts (Local Government Act 1985, section 4 and Schedule 1 Part I) which contains elements of the structure plan and local plan. There are proposals to introduce a similar system for the shire counties. The White Paper "The Future of Development Plans" (Government White Paper 1989) outlines the government's proposals to introduce legislation to "simplify and improve" the development plan system in England and Wales. The proposals include the introduction of a single tier of district development plan to replace the present two tier system, and the provision of regional planning guidance to assist in the preparation of new statements of county planning policies and district development plans (Government White Paper 1989, p1).

Despite the obvious importance of development plans, this chapter will concentrate on the development control aspect of a local planning department's work because, not only is this "from the point of view of the property-owner ..... the sharp end of the planning system" (McAuslan 1980, p147), but it is this area which precipitates complaints to the Local Ombudsman. Hammersley (1984) estimates that development control matters account for over 90% of the total of planning complaints (p1), a finding endorsed by the Sheffield Study fieldwork interviews, where planning officers often noted that virtually all their complaints related to development control, a



handful were concerned with enforcement, and none were about forward planning.

A cursory glance at the examples of findings of maladministration in each Local Ombudsman annual report almost unanimously refers to the development control aspect of planning. Indeed, because of the high numbers of planning complaints, the Local Ombudsman proposes to give more detailed information about them, and in future years planning complaints will be categorised as neighbour notification/consultation; enforcement; miscellaneous (see CLA Annual Report 1988/89, p11). This gives some indication where the bulk of complaints arise and recent figures indicate that over one third of planning complaints related to neighbour notification/consultation problems (see CLA Annual Report 1989/90, p54). Hammersely (1984) found only one maladministration report directly concerned with development plan procedures in his examination of five years of Local Ombudsman reports (p2), presumably because, where development plans are concerned, there are often other mechanisms for participation in the decision-making process, which may not be available in development control.

Not only does this area of work precipitate a large number of complaints, but, it could be argued that it is a fundamentally important aspect of the planning authorities work. I would agree therefore, with the sentiments expressed in one authority's Annual Report, which spoke about the control of development being "a statutory responsibility which lies at the heart of the planning system". Given its crucial role, and the fact that it is concerned with the allocation of scarce resources so that "each decision .... even on a minor matter of development control, represents a value judgement about the way a particular resource - usually land - should be used" (McAuslan 1975, p xxvi), it is hardly surprising that development control is an obvious area for conflict.

Before looking at the scale of the problem it is perhaps useful at this point to look at the meaning of development control. Under the 1971 Act "development" is "the carrying out of building, engineering,

mining or other operations, in, on, over or under land, or the making of any material change in the use of any building or other land" (section 22). Development is controlled by the grant or refusal of planning permission, as development should only be undertaken with planning permission granted by the local planning authority (Town and Country Planning Act 1971, section 23[1]). Development without the necessary planning permission is not, of itself, a criminal offence: this is only committed by a failure to comply with an enforcement notice served under Part V of the 1971 Act. Local planning authorities are not obliged to serve such a notice: it is a matter of discretion, which allows the serving of an enforcement notice "if they consider it expedient to do so" (section 87 [1]).

In order to keep a sense of proportion, it is worth noting that, despite the large numbers of complaints relating to development control, the vast proportion of decisions are not problematic. For example, in the six months from January to June 1989 there were 355,000 applications for planning permission to local planning authorities and 270,5000 decisions given (See Journal of Planning and Environment Law 1990, pp1 and 245). In the year 1988/89 there were 2,889 complaints received about planning, 118 of which were the subject of formal investigation (see CLA Annual Report 1988/89, pp48 and 51). Hammersley (1984) also notes that from 1974 to 1983 there were 3½ million planning applications made, but only 423 reports of maladministration in planning departments.

It is also worth noting that the public at large do not appear to be dissatisfied with planning departments. For example, Widdicombe (1986) found that only 9% of respondents expressed dissatisfaction with the way their local authority dealt with planning applications, which was a much lower percentage than for other services. However, this was not because they were in general "satisfied", as only 32% expressed satisfaction. This again was in contrast to other services, where a higher percentage expressed satisfaction. The majority had no view, with 43% saying "don't know", and 16% saying that they were neither satisfied or dissatisfied, presumably because they had had no

direct dealings with planning departments (Widdicombe 1986, Research Volume II p39).

This finding was endorsed by the Sheffield Study consumer survey, which did not reveal a higher level of dissatisfaction with planning than with other departments. Apart from, predictably, housing, which had a 25% dissatisfaction rate, the other departments had 10% of respondents expressing dissatisfaction. The numbers expressing satisfaction with planning was lower (17%) than for other departments, which ranged from 28% to 30%, but again, this may be a reflection of the fact that few respondents had any dealings with this department, so that they had no firm opinions. From the Sheffield Study therefore, it appears that the majority of the public approve of or accept the work of the planning department, with only a minority appearing unhappy about the service they received.

However, despite the fact that obviously many development control decisions are unproblematic, the large number of complaints is a cause for concern, although it must be admitted that officers in planning departments did not appear unduly concerned about it, and, as shall be shown later in the chapter, few departments had complaints procedures. It may be useful, at this point, to look at why there is such a high level of complaints in planning departments.

#### Planning Complaints and Complainants

The Town and County Planning Association note that the "usual reason for a complaint is a contentious proposal, the handling of which causes grievance either to the applicant, who feels he is being unfairly treated or obstructed, or a neighbour, who objects to the proposal" (TCPA 1980, p133). Experience from the Sheffield Study indicates that it is more likely to be the neighbour who has a complaint. Indeed, the recent categorisation of planning complaints by the Local Ombudsman reveals that of the 2,562 planning complaints, 758 were in relation to neighbour notification and consultation, and

284 were about enforcement (CLA Annual Report 1989/90, p54). A cursory look at the Local Ombudsman reports indicates that these, in the main, come from dissatisfied third parties rather than applicants for planning permission.

The majority of respondents to the Sheffield Study survey of local authority planning departments (62%, 81) thought that complaints arose because dissatisfied third parties or neighbours were using the Local Ombudsman as a means of appeal. This was endorsed during fieldwork, when a number of officers mentioned that planning was essentially "conflict prone" and that it was almost inevitable that interest groups and amenity groups would complain if they did not agree with the council. While acknowledging that this may be the case, and that this in turn may be a function of the recognition of the value and right of public participation, which was introduced by the Skeffington Report (1969), good authorities have introduced procedures to try to reduce complaints from third parties. These will be discussed later in the chapter. 40% (53) of the Sheffield Study survey respondents also thought that complaints were inevitable because of the complex and discretionary nature of planning decision-making, and a lack of public awareness about the role of planning.

During fieldwork officers spoke of the public's "misunderstanding the extent of the ombudsmans power", and trying to use the Local Ombudsman as a threat. One officer complained that public participation in the planning process had "been encouraged to an extent where it is now reducing the quality of decisions", and that because there is no appeal against an unsuccessful objection, the Local Ombudsman is used out of a sense of frustration and misunderstanding of his powers. This gives some insight into the planners perceptions of their role, which is that of professionals exercising their judgement in an impartial way for the benefit of the whole community, and which is summarised by one respondent, who thought that complaints arose because of:

"the misunderstanding of town and county planning as an administrative/bureaucratic process of interference with private rights rather than a technical task serving the public interest. Unlike more obviously specialist fields where one hesitates to dabble, everyone can be 'an amateur planner'".

This attitude, of planners seeing themselves as neutral, skilled advisers, has been observed by Goldsmith (1986), who notes that the view that planning is a political activity in the broadest sense "has only recently and grudgingly been accepted by the *planning profession* itself" (p126). This is a result of the professional ideology, which claimed that planning was "objective, technical and ... non-political", and a belief that there was no disagreement in society about goals, and that the means for achieving them "could be decided by the technical methods available to the planner" (p126).

Such attitudes are not universal, and there were authorities which were concerned to see planning decisions as involving a wider constituency. As an example, one London borough, in its "Statement of Current Policies" for planning, lists as the objectives which the development control process must satisfy as follows:

"The first is to ensure that the Council's intentions with respect to development in the Borough .... are carried out, and the second is to ensure that applications are dealt with efficiently and speedily .... Lastly the process must ensure that both developers and other interested parties have reasonable information and access to the Council, so that fair and reasonable decisions are taken" (emphasis added).

Burton (1986), the head of planning in a London borough, also makes the point that his council "recognises that in order to have a healthy planning system, it must have the support of the public" and that "planning decisions should be reached openly and clearly seen to be fair and consistent" (p1).

The Sheffield Study survey also revealed that half (51%, 67) of the respondents from planning departments thought that complaints were a reflection of the fact that there was much public interest in planning, and that there was a major concern about private property values. Again, during fieldwork, this point was taken up, with officers saying that people complained because of the impact of planning on people's lives, and that the public were "more involved with the political processes these days". It was also thought to be a function of the increase in home ownership. Before the 1947 Act, few people owned their own homes, so there was less concern about protecting private property values in the past. 12 (9%) respondents also thought that people used the Local Ombudsman and planning departments, to attempt to settle neighbour and nuisance disputes, a reason that was mentioned during fieldwork, and about which there was evidence on some of the local authority files.

From reading Local Ombudsman reports, the ombudsman seems to identify third party problems as a major cause of complaint. Laws (CLA Annual Report 1985) urges local authorities to keep their procedures regarding neighbour notification under review because "if notification of applications is restricted, or even omitted altogether, the sense of grievance is heightened" (p12). He criticises those authorities which "still maintain a policy of simply carrying out such notifications as are required by statute", maintaining that, if they do not have a discretionary notification procedure they should have a system "for considering in each case whether amenity considerations require that neighbours should be notified" (p12). More details about consultations and neighbour notification will be given later in the chapter, but it is useful to note here the use of the ombudsman as a quality control mechanism for improving practices and procedures.

Hammersley (1984) in his study of five years of Local Ombudsman decisions in planning reports found, that of the 269 cases of maladministration during this period, 23% were concerned with failures to consult third parties, and 18% were about a failure to obtain other appropriate information. These cases referred "almost entirely to

'neighbour consultation' - where there is no statutory obligation to do so" (p3). Other major areas where maladministration was found referred to failures to enforce planning controls (18%), failure to convey information to decision making bodies (13%) and giving wrong information to the public (11%). In this latter category, two thirds of cases concerned applicants or developers, who, for example, were told that planning permission was not required, but this was later found to be untrue and an application was refused or amended after work had begun, or they were asked to produce expensive plans which were subsequently found to be unnecessary. The other third concerned third party misinformation, where, for example, a neighbour is told by an officer that an application is bound to be refused, as a result of which the neighbour does not submit a formal objection, but this application is subsequently approved (p6). In the main, then, he found that the complaints were from neighbours who were unhappy about the grant of planning permission, and the effect it would have on their property.

Only a minority of respondents (11, 8%) to the Sheffield Study survey thought that the sheer volume of work led to complaints, and only 12 (9%) mentioned staff shortages and staff fallibility causing complaints. However, there can be no doubt that mistakes will occur, and unlike the clients of social services departments, those who have dealings with planning departments are unlikely to accept the consequences. Friedman (1974) has noted that the "better educated and higher-economic classes" have a tendency to complain, a view endorsed by Justice (1980) and Lewis and Gatheshill (1978) which found a strong middle-class bias among complainants to the Local Ombudsman. The Sheffield Study Ombudsman Complainants survey also endorses this finding, with 77% of the respondents being owner-occupiers.

The clients of planning departments tend to be owner occupiers and from the higher socio-economic classes. The Sheffield Study consumer survey found that, of the 33 respondents who had dealt with the planning department, 23 were private sector residents, and 22 were in social classes ABC1, which was in marked contrast to those respondents

who had dealt with the housing and social services departments. So, unlike social services clients, they are more likely to complain when they feel dissatisfied with a decision.

In most cases complainants have little to lose by complaining, and a great deal to gain by a successful complaint. Time and again, during the Sheffield Study fieldwork, officers noted that ombudsman complaints were a form of third party appeal against planning permission, for those who had no other form of redress. Does this, then, indicate that there should be some method of appeal by third parties when there is a grant of planning permission? Harlow and Rawlings (1984) point out that it is important "to bear in mind how limited are the rights of 'objectors' to participate in development control procedures" (p247), as only the applicant can appeal to the Minister.

Despite the obvious frustration felt by third parties, not one planning officer interviewed wanted the introduction of a statutory right of third party appeal to the minister. They saw that the problem was best tackled by consultation at an early stage.

The evidence from the Royal Town Planning Institute to the Widdicombe Inquiry (RTPI 1985) came out strongly against introducing a right of appeal for third party objectors against the grant of planning permission, believing it "would further weaken the role of elected members and make the planning application process unreasonably protracted and uncertain" (p5). The introduction of such an appeal would entail a large number of practical and procedural problems, and although public consultation is very important "an applicant for planning permission is entitled to permission unless there are strong and overwhelming reasons for refusal and the balance should not be disturbed by strengthening the forces against change" (p5).

This presumption in favour of planning permission is not new. In 1953 the Ministry of Housing and Local Government was saying that development "should always be encouraged unless it would cause



demonstrable harm to an interest of acknowledged importance" (Ministry of Housing and Local Government 1953, para 2[a]). Recent guidance from the Department of the Environment has endorsed this principle:

"The planning system fails in its function where it prevents, inhibits or delays development which can reasonably be permitted. There is always a presumption in favour of allowing applications for development, having regard to all material considerations, unless that development would cause demonstrable harm to interests of acknowledged importance" (DoE 1988, para 15).

Of course, this begs the question of what is meant by "demonstrable harm", and what "interests" should be taken into account. Elsewhere in the Circular (DoE 1988), the purpose of planning is acknowledged to be the regulation of the "development and the use of land in the public interest" (para 17). Again, who defines "the public interest", and what about the many conflicting interests that may arise in development control situations? Moreover, the Minister has admitted that the presumption in favour of development does not override established policies, but is rather a statement of the basis of the whole system, "that good reasons must be given to justify any refusal of permission" (Minister's speech at the AGM of the Planning Inspectorate, quoted in the Journal of Planning and Environment Law 1990, p178).

This is a recognition that an application for planning permission is not solely a matter between an applicant and the local planning authority. On the one hand the authority will devise its policies according to the needs of the locality. In other words, decisions on planning applications "are based on wider policies and proposals in which the public also need to be involved" (Burton 1986, p1). Moreover individual third parties or neighbours may have legitimate interests which have to be taken into account. It does, however, seem unlikely that a form of appeal by aggrieved third parties will be introduced, and that fact in itself indicates a need for some

complaints procedures within the authority where aggrieved third parties can seek redress. Before exploring the extent of such procedures, I want to look at the other avenues of redress which can be used for grievances in planning departments.

#### Additional Avenues for the Redress of Grievances

The courts, traditionally, are the institutions to which aggrieved citizens will turn, but their use in development control is limited. Applications to the High Court for the review of planning decisions are "governed by preclusive procedural provisions which are designed to restrict the means by which a challenge may be brought, the class of person who may bring it, the time within which they may do so, and the grounds on which they may rely" (Boydell and Lewis 1989, p146). Even when cases are brought, less than 50% are successful, and even for those which are successful there is "an even chance that the quashed decision will be redetermined to its original effect" (p146).

One method of challenge is by virtue of section 245 of the Town and Country Planning Act 1971, which allows an appeal concerning the validity of a decision by the Secretary of State in certain limited circumstances, by a person "aggrieved" by the decision, that is by any person who had a right to have his/her representations considered on the appeal and who feels a genuine grievance at the way the decision has gone, but not someone who is a "mere busybody" (Boydell and Lewis 1989, p146). Should the Secretary of State's decision be quashed, it has to be redetermined and a fresh decision must be reached in accordance with the court's judgement. The court cannot substitute its own decision for that of the Secretary of State (p154). As this particular procedure relates only to decisions of the Secretary of State, and not local authorities it is not a method of challenging planning departments decisions, and will therefore not be discussed.

The procedure which can be used against a local planning authority is that of challenging, by way of judicial review under Order 53 of the Rules of the Supreme Court, decisions of local authorities.

This remedy is limited, because it will not be granted where there is an effective redress at the applicant's disposal. For example, in R v. London Borough of Hillingdon, ex p. Royco Homes Limited (1974) 2 WLR 805, conditions were attached to an outline planning permission, for residential development, that the houses built should be occupied by people on the council's waiting list for council housing, with security of tenure for 10 years. These conditions were unanimously held to be unreasonable and ultra vires because the conditions were not directed to furthering a town planning purpose. However, the court did say that this remedy would not be available where there was an effective means of redress, where almost invariably there would be in planning cases, because of the appeal system under the Town and Country Planning Act. This case indicates therefore that "an applicant who is refused planning permission should follow the statutory appeal procedures unless the excess of power alleged against the local authority is something quite out of the ordinary" (Boydell and Lewis 1989, p153).

In the normal course of events, the aggrieved applicant will appeal to the Secretary of State, and such conditions will be removed if, for example, they do not serve a planning purpose or do not fairly relate to the development permitted. Where judicial review is more likely to be used is where allegations are made against a local authority of improper motive or bad faith in reaching a planning decision, that is, in cases where it is the process of decision-making, not the merits of the decision itself which is to be examined.

In view of this, it will not usually be applicants for planning permission who use Order 53, but rather those who cannot make use of the appeal procedures provided by the Town and Country Planning Act. In other words, it will be aggrieved third parties who use the courts in an attempt to quash the decision of a local authority to grant planning permission.

For example, in R v. Torfaen B.C. ex parte Jones (1986) JPL 686, owners of kennels applied for planning permission to rebuild kennels

which had caused a nuisance in the past. Despite objections from neighbours the planning committee supported the application. One of the objectors (Jones) had requested a site meeting because the plans he had seen appeared to be inaccurate, but this was rejected by the committee and planning permission was eventually granted. Judicial review was granted on the grounds (inter alia) that the local planning authority should consider planning applications fairly, and that this required both the views of the applicants and objectors to be considered. To fulfil the "fairness" requirement the committee should have allowed representations from the objectors in respect of the amended plans. The objectors were prejudiced because they were not dealt with fairly, and were therefore entitled to relief.

This requirement to act fairly was also the basis of the decision in R v. Great Yarmouth B.C. ex parte Botton Bros. Arcades Ltd (1988) JPL 18, which concerned an application for change of use from a hotel to an amusement arcade. Although the non-statutory seafront plan of 1980 indicated a preference in favour of commercial entertainment, since 1984 permission for further arcades had been refused on the grounds of proliferation. The initial response therefore was to refuse this change of use, but after taking expert advice that the building was non-viable as a hotel, the application was supported. Existing arcade owners were aware of the application but they did not object because they were aware of the policy on arcades and assumed it would be refused. When they became aware that it could be approved they asked the council to defer the decision so that they could make objections, but this was not done, and permission was granted.

On an application for judicial review it was held that although there was no duty to give notice, nor to hear objectors before deciding applications, and although the objectors did not have a "legitimate expectation" in that no actual rights were affected by the decision, the objectors' submissions would have been "material" in planning terms. The unusual circumstances of this case led to a duty to act fairly, and this meant that objectors should be given an opportunity

to make their objections which may have influenced the committee. Therefore the council were in breach of their duty.

Walsh (1988) concludes that the courts may intervene if the process is seen to be unfair, but they do not seem to recognise a "legitimate expectation" to consultation outside the statutory requirements, except where, as in the Great Yarmouth case, there has been a departure from the norm (p19). However, Hinds (1988) maintains that where an authority's practice has created an expectation that a decision will not be taken until neighbours or others have been notified and/or given an opportunity to object, and that such objections will be duly considered, it will be a breach of natural justice to frustrate these expectations (p744). He cites the Torfaen case to support this proposition and also says that the courts are developing a concept of fairness in this area, believing that the standard of fairness required by the Town and Country Planning Acts could lead to greater procedural rights for objectors generally (p748).

Despite these developments, the courts have only a limited application in redressing grievances in relation to planning matters, and the respondents to the Sheffield Study survey appear to be content that this should remain so. Only one respondent believed it was desirable to reform the complaint handling process by extending the powers of the courts. Most respondents also believed that the decisions of the courts have limited effect on their internal procedures, with only 29% (38) of respondents claiming that their internal procedures had been affected by court cases, compared to 67% (88) who said that the Local Ombudsman's decisions had affected their procedures.

The courts still adhere to the underlying principle that "the controlling process of town and country planning over the development of land is an administrative (and not a justiciable) process" (Heap 1987, p222. Original emphasis). A challenge in the High Court must be on a point of law. The courts cannot look at the merits of the decision:

"We are not a Court of Appeal from the Planning Committee. We cannot substitute our views for that of the Planning Committee" (per O'Connor L.J. in R. v. London Borough of Haringay, ex parte Barrs and Faherty [1983] JPL 54).

This does limit the usefulness of the remedy.

The right of appeal to the Secretary of State for the Environment is limited to an aggrieved applicant for planning permission. Section 36(1) of the Town and Country Planning Act 1971 allows such an appeal within six months, if planning permission is refused, or is granted subject to conditions which are unacceptable to the applicant. Section 37 allows a similar right of appeal if the local planning authority fails to give a decision at all within eight weeks. The Secretary of State may allow or dismiss the appeal, may vary any part of the decision, and can deal with the application as if it had been made to him in the first instance (section 36(3)). He can, thus, add more onerous conditions than those originally imposed by the local authority, or refuse planning permission where the local authority originally granted it (see Heap 1987, p220).

Some authorities visited during the Sheffield Study fieldwork expressed dissatisfaction with the way the appeals system was operating, believing that in recent times the Secretary of State has tended to approve large commercial developments even when the authority believed it was against the public interest. Some wanted the right of appeal removed in cases where the planning authority had a publicly declared policy which had been through the consultation process and obtained the approval of central government, and the application was contrary to this policy. Appeals on questions of interpretation of the development plan would be in order, but not where there was a clear dispute of the policy. Where such appeals were allowed, it would "drive a coach and horses through the policy". One officer complained that not only are inspectors remote figures from central government "but they are all too willing to follow DoE circulars which may conflict with local and structure plans".

Although central government wanted to encourage small businesses and enterprise, officers thought that this policy should not be enforced at the expense of development plans, which identified matters of local importance, and which were drawn up after consultation with the local population.

Some officers thought that there had been an increase in the number of appeals in recent years, and thought that this was because, as applicants now had to pay for their applications, they were more reluctant to accept a refusal. Some thought that a system of payment for appeals would prevent obviously frivolous ones, but there was little support generally for the introduction of a system of payment, or for the award of costs against the unsuccessful party.

However, the Royal Town Planning Institute (RTPI 1985) believes that costs in appeal decisions should be more widely awarded "both against local authorities in wasting time and money in reaching thoroughly unjustifiable decisions and appellants who likewise make cavalier appeals contrary to publicly agreed and up-to-date plans and policies" (p6 para 25). Costs can be awarded in planning appeals where there is "unreasonable" behaviour which causes the other side to incur costs unnecessarily (see DoE 1987 Circular 2/87), and in the twelve months up to the 31st May 1990, costs were awarded to the local authority in 53 cases (see Journal of Planning and Environment Law 1990, p564).

There are also proposals to introduce fees for planning appeals which are proving "perhaps surprisingly, relatively uncontroversial" (Howard 1989, p1). The government is, apparently, worried by the increase in the number of appeals (in the year 1988/89 planning appeals increased by 14% to over 21,000. See Journal of Planning and Environment Law 1990, p1), not only because of the resource implications, but because some see "this 'planning by appeal' as a centralisation of decision-making" (Howard 1989, p1). Howard (1989) states that the government believes that decisions that have local implications should be taken at the local level against the background of locally agreed policies and proposals (p1), and there are proposals to legislate to prevent

repetitive or substantially similar applications being made within two years of an unsuccessful appeal where there has been no national change in circumstances (p5).

These proposals will have implications for some authorities visited during the Sheffield Study fieldwork which relied on the fact that it was a relatively easy matter for applicants to appeal, and therefore rejected applications if they were unsure. One officer said that a newly elected administration tended to reject up to 40% of applications because at first they are unsure and realise that people can appeal to the DoE, which then bears the responsibility and blame. Once the administration is established only 15-20% of applications are rejected as members gain confidence in their ability to make decisions. Another officer thought that the ease with which people could appeal meant that councillors were more happy to go against officer advice.

This technique was also used in cases where the planning committee had not yet formed a policy. In such cases the practice would be to refuse the application, even if officers had recommended approval, until they had established their policy. This kind of tactic had been used in the area of conversions of dwellings into private residential homes for the elderly.

Such practices are questionable, and, indeed, as long ago as 1949, the Minister of Town and Country Planning criticised them:

"The Minister deprecates the practice of some authorities who had admitted that, in order to avoid the responsibility of deciding an application in favour of an applicant in a borderline case, they preferred to refuse permission and place the responsibility of deciding the application on the Minister. The Minister advises that, in cases where no serious issue is involved and where the authority can produce no sufficient reason for refusal, the presumption should be in favour of granting the application" (Minister of Town and Country Planning 1949, para 5).



This approach is in contrast to some other authorities which reject only about 10% of planning applications, because they have consciously adopted a "negotiating style" when dealing with planning applications, rather than placing a premium on arriving at a decision within the statutory 8 weeks, as in some authorities. Rather than taking the application as it stands, and, if it is refused leaving the matter to the DoE appeal mechanisms, or a further application, the "negotiating style" involves discussion with the applicant which may take longer, but which ultimately results in an application which is acceptable to all parties. This practice will be discussed in more detail later in the chapter.

This system of appeal, does not help aggrieved third parties, such as neighbours or local residents, who are opposed to the grant of planning permission. They have no right of appeal to the DoE if permission is granted. As already indicated, there was no support among planning officers for the introduction of a statutory right of third party appeal to the Secretary of State, because it was thought to be open to abuse, wasteful of officers' time, and "would mean that virtually all decision making is taken out of the local authority's hands". Apart from the limited use of the courts, the most useful remedy, and in many cases the only remedy, is to turn to the Local Ombudsman.

The high number of complaints at Local Ombudsman level has already been noted, and some of the reasons for this have already been discussed. Most planning officers were very supportive of the work of the ombudsman, and said that they had learnt a lot from them. The majority of respondents to the Sheffield Study survey (67%, 88) recognised that Local Ombudsman decisions had affected their internal procedures and were quite content that internal departmental procedures, backed up by the use of the ombudsman, were the best method of dealing with complaints. Comments were made about the Local Ombudsman being a valuable system which imposed discipline on the planning committee, and which provided an impartial and neutral judgement free from the influence of local and national government.

There can be no doubt of the value of the Local Ombudsman in this area, and the numerous examples observed during the Sheffield Study fieldwork, where procedures had been improved as a result of ombudsman investigations, can only lead to endorsement of the Royal Town Planning Institute's view that in "recent years the Local Ombudsman has been a force for consistency and open decision making" (RTPI 1985, p6 para 22). The Institute's practice has been to work closely with the ombudsman, and "to guide its members on how to meet the standards sought by the Ombudsman" (p6 para 22) with a view to improving performance.

Certainly, the ombudsman is working for consistency in decision making, and has found maladministration where neighbours were treated by two officers in "markedly different ways in similar circumstances" (88/B/826); where planning permission was inconsistent with earlier decisions of the council in relation to the land (88/C/1872 and 88/C/1853); and where a failure to consult was contrary to normal practice (88/A/2323). There are also cases of maladministration because the authority had not followed their own procedures and policies (see for example, 88/B/2059; 88/C/0510; 89/C/0511).

One case (87/B/0493) illustrates the advantages of the ombudsman's methods, over the courts. In this case the council had made inadequate inquiries into the planning history of a site beside the complainant's home, and the ombudsman found maladministration because the council had not made sufficient enquiries. This case is a good example of the use of the ombudsman when a complicated issue of mixed law and fact presents itself. The courts could have made a ruling of the law, had the facts been clear, but "it was only during the course of the Local Ombudsman's investigation, that the facts actually emerged" (Editors Note, Journal of Planning and Environment Law 1990, p295). In this case, therefore, the courts would not have been appropriate.

However, despite the obvious benefits of the ombudsman system in improving procedures generally, and despite the fact that Crawford

(1982) concludes that "not only does the Ombudsman provide a different remedy but may indeed go beyond the remedies provided by the courts" (p627), the limitations of the Local Ombudsman cannot be overlooked. Firstly, the Local Ombudsman can only make a finding of maladministration, and cannot look at the merits of the decision. This is by virtue of the Local Government Act 1974, which states that the ombudsman shall not "question the merits of a decision taken without maladministration by an authority in the exercise of a discretion vested in that authority" (section 34[3]). So, the ombudsman will not substitute his view "for that of a professionally qualified officer, if the officer has considered the matter properly and observed the Council's appropriate procedures" (88/B/1836). In another case where there was no obligation on the council to notify neighbours and there were no guidelines to officers the ombudsman said "I do not question the merits of the decision" (89/C/0312).

Indeed during the Sheffield Study fieldwork, some officers mentioned the fact that some complainants are "just lucky" that the investigation finds some technical fault, however minor, upon which to pin a finding of maladministration and there was a view that if the ombudsman felt there was some injustice, there would be an effort to find some administrative error. On the other hand, one officer had doubts about the "narrow administrative" approach, taken by the ombudsman in some cases, and thought that the ombudsman was "too gentle" with local authorities on occasion.

This view, however, is not the complete story, and an examination of local authority files indicates examples where some fault was found but the ombudsman concluded that it would not necessarily have led to a different decision by the committee. For example, there was one case concerning a London borough where the complainant was a commercial concern complaining that he had not been notified personally of a planning application, involving neighbouring property. The council's response was that it had never normally been the council's practice to individually consult commercial concerns. The CLA decided not to investigate, for the following reasons:

"it would have been better for the council to have consulted you at the time of the planning application . . . . I do not believe that any injustice has been caused to you as a result of their failure to do so. If they had consulted you there is no suggestion that any objections you might have made would have resulted in the application not being approved" (CLA letter to complainant).

No matter how serious the finding of maladministration and injustice by the ombudsman, the planning approval cannot be set aside, and the complainant is left with, in some cases, monetary compensation, or just an apology. Councils are usually prepared to compensate the complainant, and one Local Commissioner finds no difficulty in obtaining satisfactory action from councils in complaints about development control, as "increasingly, councils are recognising that mistakes are sometimes made in the process of giving planning permission and are prepared to take appropriate action (very often the payment of financial compensation) to those adversely affected by the mistake" (Mrs P. Thomas in CLA Annual Report 1988/89, p35).

During the Sheffield Study one case was noted, where an exceptional remedy was agreed to by the council, which could not fail to satisfy the complainants. In this case petrol storage tanks were erected following planning permission, where the council admitted error on their part. The council agreed to resite the tanks at great expense which resulted in the Local Ombudsman discontinuing the investigation, and writing to the council as follows;

"I would like to place on record my appreciation for the way that this complaint has been handled by your council and for the action which has now been agreed in spite of the high cost involved. It is likely that I will cite this settlement in my next annual report as an example of a council who not only admitted that they had made a mistake, but took effective steps to mitigate the effect of it".

There is no doubt that the Local Ombudsman has been a force for the good in the area of development control, in particular, in encouraging departments to look at their procedures, and consult as widely as possible before a decision is made. A number of authorities observed during the Sheffield Study had a clear ombudsman record or very few cases each year, which they all ascribed to "doing things properly", taking time over applications, consulting widely, making site visits, and adopting a "negotiated settlement" approach rather than a "formal disputation" approach. All recognised that if public pressure or neighbour objections were disregarded, the council could be open to a charge of maladministration. They were therefore careful to take all views into account and to be prepared to defer matters if there were late objections. However, despite the improvements in planning practice brought about by the Local Ombudsman, the large number of complaints to the ombudsman indicates a need for some method of dispute resolution within planning departments themselves. The extent to which such procedures exist will be examined in the next section.

#### The Extent of Formal Complaints Procedures

The justifications for the use of complaints procedures in general have been discussed at length in Chapter 7, and I have already looked at the special needs of social services departments, but are there reasons for planning departments to have complaints procedures? Although it is probably true that those aggrieved by a decision of a planning authority are more likely to complain whether there is a procedure not, a formal grievance procedure may actually aid management, as well as the complainant. If the procedure incorporates a system of participation and monitoring, it will indicate trends for complaints, which may then enable the department to amend existing policies and practices. Good authorities recognise the usefulness of complaints. For example, the procedure documents of one county council noted that:

"Complaints are often helpful in that they can identify a weakness in procedures and help improve our service for the

future. Even complaints without substance may be useful as showing a need for a better understanding of what we do, why we do it and how we go about it".

The Audit Commission (1986c) suggests that complaints can be used as a system of monitoring in relation to development control (p30), and suggests that good management "will recognise that tensions are likely to occur between different interests in the planning process and will have mechanisms for resolving conflict between one aspect of planning and another" (p25).

Although it was argued by a few officers that grievance procedures add another unnecessary layer of procedures to those already existing, some of the larger authorities visited during the Sheffield Study fieldwork which had the best and most advanced procedures, did not share this view believing that good procedures reduce the number of complaints going to the ombudsman, and that although making a thorough departmental investigation could be a nuisance and time-consuming, it was worthwhile because, either the complainant was satisfied, or, if not, when a formal complaint was made to the ombudsman, they had all the information available. When a correlation was made between departmental ombudsman records and departments with developed procedures, it was found that the six large authorities with excellent Local Ombudsman records all had developed departmental or authority-wide procedures. Five randomly selected authorities with neither formal departmental procedures nor authority-wide procedures had below average ombudsman records.

Another argument for the use of complaints procedures in the public sector, which has already been discussed in Chapters 7 and 8, is that the consumer of public services has a lack of choice. Although the problem is not quite the same for planning as it is for social services, where goods and services are allocated and rationed on an individual basis, planners do make choices about the allocation or removal of resources. It is therefore important that consumers, especially involuntary ones, like third parties affected by a planning

decision, can register their dissatisfaction. The large number of complaints which come from third parties indicate the size of the problem. There are obviously a large number of people who feel that the formal planning system does not take their interests into account, even though they are directly affected by it. A formal complaints procedure would provide a channel for such grievances, in particular from those who have little input into the planning process.

Such a procedure may also allow more participation from those people who have traditionally been excluded from the planning process, which has been dominated, according to McAuslan (1980) by lawyers on the one hand, and the professional planners on the other (p2). Thus, he says that the "law and lawyers have played a more significant role in development control than in any other part of the planning system since its creation in its modern form in 1947" (p147). The lawyer's approach is private property rights orientated, which has found favour in the courts (p180).

On the other hand according to McAuslan (1980) there is the planners' ideology of public interest "as defined and administered by the planners", which "sees individual cases as less important than the furthering of the public interest as a whole" (p181). The conflict has traditionally been played out by these two ideologies, and the general public have traditionally been excluded from direct participation. McAuslan (1980) concludes that "the ideology of public interest is dominant over the ideology of public participation and without significant changes in institutional structures and processes in government, is likely to remain so" (p237). Within this context, complaints procedures are a way of attempting to tilt the balance a little, to involve otherwise excluded members of the public in the planning process. As well as allowing members of the public to contest the decision of planners, complaints procedures could also provide additional information to planners to inform their decision.

As in social services, knowledge about the extent of procedures in planning departments, is based on the work conducted for the Sheffield

Study, supplemented by recent developments in this area. For the Sheffield Study, postal questionnaires were sent to half the local authorities in England with planning responsibilities (205 authorities) and the response rate was 64%. The questionnaire asked not only about internal complaints procedures, but also about specific aspects of planning practice, for example, publicity and consultation practices in development control, and these returns were supplemented by fieldwork in selected authorities.

The definition for complaints used throughout the Sheffield Study was that contained in the 1978 Code of Practice (CLA 1978, para 1-2), but this seemed to raise more problems in the planning area than in any other service area within the local authority. This is partly explained by the fact that some questions asked about internal appeal mechanisms for complainants and appeals, but as the word "appeal" to planners refers specifically to appeals to the Secretary of State about the refusal of planning permission, some respondents wanted to take issue with the definitions. Nevertheless, it became clear that departments do have procedures for dealing with complaints which are completely separate from the statutory appeals procedures.

This problem of definition was recognised by authorities in their own internal procedure documents. For example, one authority specifically stated:

"complaint should not be defined too narrowly. It will include all those matters which from their context are obviously intended to be complaints and also criticisms of the council, committees, members, the departments, officers, procedures, letters and documents etc."

This document also recognised that planning, by its very nature, can give rise to disagreements, but that these are not necessarily complaints against the council:



"Objections received in response to normal public participation processes are not to be regarded generally as complaints although members of staff in doubt should seek the views of the Deputy County Planning Officer".

Only 31% (41) of planning departments had formal written procedures for dealing with complaints, the majority of these (36) being applicable to all areas of the departments work. In the 5 departments where the complaints procedure did not apply to all areas of work, the procedure related to complaints about enforcement actions.

Such a low level of formal procedures did not appear to be a matter of concern for the questionnaire respondents, as only 37% (49) thought it was even desirable for departments to have formal written procedures for the resolution of complaints, which is in contrast to social services departments where the over-whelming majority (79%) of respondents thought that they were desirable. What is interesting about this response is that, although 19 of the 89 respondents who did not have a written procedure said that to have one would be a good idea, 10 of the 41 respondents who did have a complaints procedure did not think it was desirable, expressing a preference for a more flexible, discretionary approach to complaints. This view was endorsed by the fieldwork where most planning officers appeared to believe that complaints are satisfactorily dealt with by informal mechanisms.

Hammersley (1984) found similar attitudes when looking at procedures in planning departments designed to obviate Local Ombudsman involvement. Most authorities made no attempt to resolve complaints, and believed that a special complaints committee, for example, would usurp the powers of the ordinary committee, or would be an admission of defeat.

Of the departments which had formal complaints procedures only 12 claimed to give these procedures publicity. However, this was found to be an over estimate, as the majority tended to be internal

documents for the benefit of officers and members. In only six cases could it be said that publicity was given in "public" documents, three of these being in the rates booklet, leaflets and notices in council offices, and a further three making details available in the council minutes only, which must have limited public circulation.

It should be noted that this section of the questionnaire was specifically about procedures within the department for handling complaints. Some departments without formal complaints procedures do have authority-wide procedures, and therefore, although there appear to be few departments with procedures, complaints may find expression in the authority-wide procedure, a fact which was confirmed by the fieldwork. Thus, although a number of planning officers wanted informality and flexibility at the departmental stage, they saw the value of a formal authority-wide procedure for complaints which were not resolved at departmental level.

Of the minority of authorities which had formal procedures eight said that complaints were dealt with by officers only, two by members only, and the majority (28) had both officer and member involvement. From the fieldwork, it became clear that senior planning officers treat complaints as management problems rather than problems of accountability, and the aim seemed to be to retain control over the dispute. This was endorsed by the fact that only 16% (21) of respondents thought it was desirable for there to be an independent element in the final stage of a complaints procedure operated within the planning department.

Certainly, during the Sheffield Study fieldwork, it became clear that member involvement in individual cases was not welcomed or encouraged, the view being that complaints are "just another part of the general business of a responsive, planning department". The members' role was seen to be one of policy making, while officers were to administer such policy, using their trained professional judgement. Some officers even thought that member involvement would lead to injustice since decisions were technically correct and accorded with policy or

not (a matter which was capable of being decided by planning officers) and that member involvement usually meant that members were trying to reinterpret, or even change, their own policy, which led to inconsistencies. The clear impressions gleaned from these interviews was that planners disapproved of member involvement in "administrative matters" which, according to the officers, included complaints.

This is a further example of the "corporate management" approach in local government which has been discussed in previous chapters, where "the average councillor is squeezed between policy formulation at the top, which is for chief officers and chief councillors, and implementation at the bottom which is for the other officers" (McAuslan 1980, p241). Most officers believed that members should be discouraged from becoming involved in the daily running of planning departments. This was especially the case when officers were "negotiating" with applicants or developers, as "the applications often change and members might pre-empt the committee's decision".

Although in some authorities complaints referred through a member were given special treatment, and had a time limit for the response, generally speaking members were discouraged from becoming involved in individual cases, and there was nothing like the member involvement as was found in, for example, housing departments. During the Sheffield Study fieldwork it became apparent that in many cases members were not even informed of ombudsman investigations, let alone other types of complaints.

Planning officers certainly saw themselves as the experts, the professionals, who could exercise impartial judgement, and who, in many cases, doubted whether members could be as objective as they were. This view is endorsed by Royal Town Planning Institute (RTPI 1985), which spoke of the professions as "a force for impartiality and standards" (p11) and their concern that "the ability of officers to give impartial and independent advice .... should not be fettered" (p9). This view has been discussed earlier in the chapter, and its dangers have been recognised by McAuslan (1980), who noted that policy

choices "have too often been blurred by implying that technological scientific or social scientific research and factors have really left only one choice open to the local authority" (p244).

Despite the fact that members do not routinely become involved in complaints against planning departments, and that officers are content with this state of affairs, believing complaints are a management problem and therefore best left to the officers, only a minority (37%, 48) thought that formal complaints procedures had advantages from the point of view of management efficiency, which was, again, in contrast to social services respondents, where the majority recognised the positive role of complaints procedures and their use as a resource by revealing weaknesses in the system. Most of those (17) who said there were advantages for management efficiency said that they helped staff to approach complaints in a standard and uniform way. Others thought that procedures clarified the boundaries of a dispute and ensured a resolution one way or another. Only 11 respondents saw the value of a more systematic approach for monitoring purposes, so that operational defects could be highlighted.

This view is not shared by the Audit Commission (1986c) which, while recognising that there "is no single output for the Service which can be sensibly looked at in isolation", nevertheless, "the level of appeals and complaints" is one useful indicator to be taken into account when assessing performance in relation to development control (p11).

The majority (58%, 76) of planning departments claimed to have a system for monitoring or logging complaints from members, or those which were put in writing; 51 departments also included complaints made in person, and 49 included telephone complaints. These figures should be viewed with some caution, as the use of "complaints and appeals" together may lead some respondents to include appeals to the Minister, which they are required to log and monitor.

The majority of respondents (73%, 96) claimed to use complaints and appeals as a method of reviewing their administrative procedures, but, as only 14% (18) claimed to produce a statistical analysis of such complaints, this is probably done in an unsystematic way. Again, during fieldwork, senior planning officers claimed that they could spot trends in complaints, as there were so few complaints anyway, and that statistical analysis was not necessary.

Only 17% (22) of respondents thought that there were advantages in having statutory procedures for resolving complaints by members of the public, the majority mentioning "natural justice", and "justice seen to be done" as reasons for this preference. The majority (77%, 101) preferred resolution within the authority, because it was less complicated, cheaper and quicker, and a large number thought that the ombudsman was perfectly adequate in keeping watch over the various complaints mechanisms employed by planning departments. Some thought that internal procedures were preferable because statutory procedures may encourage complaints and harden attitudes.

The overwhelming majority were opposed to any change at all being implemented by legislation. Thus 84% (110) did not want legislation requiring a general authority-wide appeals procedure, 93% (122) were opposed to the establishment of independent tribunals by legislation, and 92% (121) were opposed to an extension of the powers of the courts. Again, this view was endorsed by the fieldwork experience, which revealed satisfaction with informal, internal methods, based largely on discretion, with the Local Ombudsman as a last resort. Few (31%, 41) even thought that it was necessary for local authorities themselves to introduce reforms to the complaint handling process. Most of these mentioned the introduction of written procedures, or codes of practice. The majority of respondents (74, 56%) appeared satisfied with the status quo, and some even pointed out (although the Sheffield Study questionnaire did not specifically ask them to do so) that complaint handling was a matter for local discretion and local democracy:

"it is for each authority to deal with as they judge appropriate for the priorities and attitudes of their area".

This emphasis on local democracy was endorsed by the Royal Town Planning Institute submission of evidence to the Widdicombe committee (RTPI 1985), which, although recognising the importance of having some method of challenging decisions "which must be capable of revealing any abuse of power or discretion by a local authority", said that it was "vital not to undermine representative local democracy by providing excessive opportunities to seek to overturn properly made decisions arrived at after public consultation and due consideration by councillors advised by their officers and acting within national legislation" (p11).

Such a view ignores the particularly limited role the councillors play in many development control decisions. McAuslan (1975) notes that approximately 70% of planning applications are of a simple nature, and that a large proportion are decided without discussion, on the recommendation of officers. The vast majority (60%-70%) of all development control applications are effectively delegated to the staff for decision, and McAuslan thinks this is probably an underestimate (p360). He concludes that the general public have, therefore, very little input in the decisions, as planners share a common ideology, which is not influenced by their employing authority. Only in rare cases is respect shown for the grassroots knowledge of the councillors, the more common view being that councillors lack professional understanding (p360). It must be rare, therefore, for councillors to come to committee with independent views, and it should not be forgotten, as Evans (1985) points out, that "the basic decision on an application may be reached long before it gets anywhere near a committee" (p13).

Added to this is the greatly increased delegated powers in relation to development control. The Local Government Act 1972 allows local planning authorities to discharge their planning functions under the 1971 Act by a committee, and allows them to appoint such sub-

committees as they may determine for the discharge of any of their functions (sections 101, 102). The authority can also delegate their planning functions to an officer of the authority (section 101), in which case the decision of the officer becomes automatically the decision of the authority, but they cannot delegate to a single member, even if that member is chair of the planning committee (see R. v. Secretary of State for the Environment, ex parte London Borough of Hillingdon [1986] W.L.R. 192).

During the course of the Sheffield Study research a variety of practices in relation to delegation was discovered. For example, in one authority officers make decisions for approval on less important applications, so long as these are not against the policy of the authority and there are no objections. In this authority almost all applications which go to the committee will have officer recommendations which are usually followed by the members, and members are "encouraged to defer a decision if they are unsure", rather than refuse or approve.

In most authorities the pattern was that officers had delegated powers to grant permission in minor matters, for example extensions, where there were no objections, and where the development was in line with the council's policy. In most authorities these delegated matters accounted for between 50%-55% of the applications. Where there were objections these were referred to committee. In most cases all matters would have an officer recommendation, although, of course, members were entitled to disagree with the recommendation. However, in some authorities, the officer recommendation was available to the public, and therefore officers warned members that this information may be used by a dissatisfied applicant in an appeal to the Secretary of State, or by a dissatisfied objector in an appeal to the ombudsman. Most authorities did not delegate the power of refusal to officers, but one London borough did allow officers to refuse on minor matters.

It is not suggested that there should be no delegation, nor that officers should not make recommendations, as this would clearly make

the process unworkable, and impossible to adhere to the statutory time limits. However, having recognised the limitation of member involvement, both before and at committee, there can be little argument of the "undermining representative democracy" - type against the introduction of mechanisms for complaint by aggrieved parties. There is also a need for procedures for obtaining as much information as possible in relation to a planning application, and for opportunities for objectors and applicants to make their views known. It is to these aspects of the development control process to which I will now turn.

Although the numbers of planning departments with complaints procedures was disappointingly low, some good practices were discovered which indicated that some authorities were concerned, not just with processing complaints, but with ensuring that people knew when and how to complain; that complaints were taken seriously, and that officers believed that consumers should be given an opportunity to challenge decisions. What was important in these authorities was that the culture of the planning department was orientated towards taking complaints seriously.

One of the major requirements of a complaints procedure is that it should be accessible to all, including the inarticulate and poorly educated, whom evidence has shown, are often reluctant to complain. The Sheffield Study consumer survey endorsed the findings of other surveys which showed that it is the higher socio-economic classes who complain, and that this is especially true of planning cases.

Part of accessibility is good publicity, and indeed, many officers saw publicity as the key to dealing with complaints. Evidence from the Sheffield Study survey and fieldwork revealed a depressingly low level of publicity for the complaints procedures which existed. This calls into question the value of procedures, when only the extremely determined or persistent complainer who is sufficiently knowledgeable will use them. Authorities with good practices in this area were the ones which encouraged the idea of partnership between people and



planners, which stressed negotiation and bargaining. This point will be taken up later, but complaints procedures were seen as a natural part of this kind of approach, which encourages officers to be less defensive and less hostile, seeing complaints as a natural part of the administrative workload.

These authorities with good procedures were the ones which took account of the differing seriousness of complaints and had procedures for dealing quickly and efficiently with those that could easily be handled by an explanation or an apology. There was however provision for a more formal stage for those who are not satisfied at this stage, where a more thorough examination of evidence was required, and a decision taken at a more senior level. The best practices observed were the ones where the complainants had at least one opportunity to put their cases orally.

The members' role in the procedure needs a great deal of care and thought. In most cases, officers, some at a very senior level, were the most appropriate persons to deal with complaints. However, members are ultimately responsible for the running of the authority, and there should be some recognition of this in the complaints procedure. The planning officers' views of themselves as the professional, impartial decision-makers came across most strongly during fieldwork, and whereas some division of labour and officer delegation is obviously necessary because of the sheer volume of work (for example, one authority had fortnightly planning meetings where there were often 500 sheets of paper to get through; another had weekly meetings, consisting of 45 applications) some officers seemed to be tipping the balance too much towards administrative efficiency, at the expense of public accountability and decision-making.

As well as complaints procedures, there is a need for procedures for obtaining as much information as possible in relation to a planning application, and for opportunities for objectors and applicants to make their views known. It is to these aspects of the development control process to which I will now turn.

Consultation Practices and Procedures

As we have seen, there is little a third party can do to overturn a planning decision once the local planning authority has granted planning permission. We have also seen that the applicant is entitled to planning permission unless there are good reasons why this should not be granted, but there has arisen "a customary right of consultation", which is looked for by the ombudsman (TCPA 1980, p133), and the better authorities, examined during the Sheffield Study, had well developed consultation practices, which, in many cases, prevented complaints arising because the public became involved at the decision-making stage.

However, even though the Skeffington Report (1969) recognised the right of the public to become involved in the planning process, the legal rights of objectors are fairly limited. The planning acts provide for only limited consultation and notification of proposed development. Section 27 of the 1971 Town and County Planning Act provides that an applicant for planning permission must notify the owner or certain persons having other interests in the land which is the subject of the application, unless, of course, the applicant is the "owner" (as defined by section 27 [7]) in fee simple of all the land comprised in the planning application. When the decision is reached, the planning authority must give notice of the decision to any such person (section 29[3][6]), as well as to the applicant.

Section 26 of the 1971 Act provides that certain classes of development must be advertised in the local press, and have a site notice displayed on the land affected by the development. Representations can then be sent to the authority within 21 days, and any representations must be taken into account by the local planning authority when it is determining the application (section 29[2]).

This procedure is only to be used for certain limited types of development, usually referred to as "bad neighbour" development, and it relates to the following: construction of buildings for use as

public conveniences; construction of buildings or use of land for waste disposal, or as a scrapyards; construction of buildings which are higher than 20 metres; use of land or buildings for use as a slaughter-house; construction or use of buildings for such purposes as casinos, funfairs, cinemas, gymnasias, swimming pools; construction or use of buildings or land for use as a zoo, or for the business of boarding or breeding cats or dogs; construction of buildings or use of land for motor car or motor cycle racing; use of land as a cemetery (General Development Order 1977, article 8, S.I. 1977 No 289).

These statutory requirements give only a limited right to consultation but DoE Circular 71/73 "Publicity for Planning Applications, Appeals and other Proposals for Development" (DoE 1973) has suggested improvements to the system. The declared principle of this circular is that "opinion should be enabled to declare itself before any approval is given to proposals of wide concern or substantial impact on the environment" (para 2). The circular suggests that local authorities should ask applicants to display a site notice where permission is sought which "in the authority's opinion, is likely to have a substantial impact on the neighbourhood" (para 7), and that other forms of publicity, for example, press and local radio handouts, and notices in public libraries, should be used as appropriate (para 11).

Despite these improvements, the emphasis is still on the "public interest" ideology, as paragraph 3 of the circular indicates:

"Planning is concerned to ensure that in the development of land the public interest is taken fully into account. Its objective is not the safeguarding of private property rights as such; nor in particular, to protect the value of individual properties or views to be had from them. Those who argue for a right for neighbours to be notified individually of all prospective developments do not give sufficient weight to this" (DoE 1973, para 3).

This sentiment has been endorsed more recently by Nicholas Ridley, the then Secretary of State for the Environment, who commented at the National Housing and Town Planning Conference in 1987:

"Planning is seen as the mechanism by which change can be resisted and established interests are protected - the view from my window, the fields down the road, the value of my property .... it is not the function of the system to resist change as such, nor to act as a sort of costless restrictive covenant for those who are already sitting pretty and want to control their neighbours activities" (Quoted in Walsh 1988).

Despite these views, the Sheffield Study survey found much more neighbour consultation than that recommended by the circular, and few officers had the same doubts about citizen participation, expressed by Heap (1973) that such a principle seemed to strike at the very roots of elective democracy. He believed that the elected representatives should be left to "get on with the job" and that the principle of citizen participation leads to town planning control by angry neighbours" (pp201-215).

87% (114) of the respondents to the Sheffield Study survey said that they had sought to comply with the non-statutory publicity recommendations of the circular. An earlier study of London authorities found that 68% (14 out of 22) complied (Evans 1985). It was not clear from the Sheffield Study responses whether departments complied with it all or just part, but what was clear was that many authorities are doing much more than the circular suggests. The circular emphasises site notices and press adverts, and explicitly opposes notification of adjoining neighbours on all applications. However, 62% (81) of authorities had adopted formal resolutions about consultations with third parties, and all but four of these revealed that they notified neighbours extensively.

For example, 12 authorities consulted all neighbours of the proposed development. Forty four authorities consulted those "affected", and

eight required site notices or press advertisements for all development. 52% (68) required site notices for some types of applications, and 55% (72) thought it was a good idea to have site notices displayed by applicants for planning permission.

Fieldwork confirmed this favourable attitude to neighbour notification, and in some cases site notices, and officers were convinced that extensive consultation prevented complaints to the Local Ombudsman and findings of maladministration when complaints were investigated. One authority had even been criticised by the Audit Commission for doing too much consultation, but they balanced this by the fact that there had been no formal complaint to the ombudsman in the previous 5 years. Another officer remarked that "even though consultation is expensive, it is cheaper than dealing with ombudsman complaints", a view endorsed by officers in other authorities.

Not surprisingly the information gleaned from third parties was used in the decision-making process. 39% (122) of respondents said that the views of third parties were taken into account in deciding an application, and 96% (126) brought to the attention of the planning committee public petitions on proposed development.

Even within the framework of policy statements, there is still much room for officer discretion in deciding which third parties to consult. Words like "adjoining neighbour", "substantially affected" and "significant alteration" are all capable of differing interpretations. Nevertheless, 73% (95) thought that a national code of practice in relation to publicity would be desirable, the majority (76) believing that this would give greater uniformity across the various planning authorities, and help to clarify the position for applicants and objectors who may often be confused by the different practices.

Of the 34 (26%) who disliked the idea of a code of practice, the majority (17) preferred to have local discretionary policies which could cater for local needs, and they believed that Circular 71/73

(DoE 1973) was sufficient. Others said that a code would be too much of an imposition on local democracy. Two respondents were opposed to codes of practice because of their ambiguous legal status, and wanted more statutory requirements in relation to publicity.

In Scotland, there is a legal requirement for neighbours to be notified, by the applicant, who has a general duty to notify those having a "notifiable, interest in neighbouring land" about the making of the application (Town and Country Planning (General Development) (Scotland) Order 1981, Article 7). Commentators have noted the increased administrative burden that this places on both the planning authority and the applicant (see Journal of Planning and Environment Law 1985, pp289-290; Rae 1985; Berry et al 1988), and there are mixed feelings about the usefulness of the requirement. One advantage is that it may lead developers and neighbours to seek some kind of compromise before any application for development is made, but problems can include delay and extra costs, and also planning officials can be led into "unpleasant domestic and civil disputes which have nothing whatsoever to do with planning" (Rae 1985, p19).

Berry et al (1988) conclude that it is questionable whether neighbour notification improves decision making, but that it has distinct advantages over the site notice system in England and Wales, and that "some system of formal notifications should be an integral part of development control procedure" (p807). It seems then, that although a statutory procedure may present problems, few would deny the importance of consultation, and the problem is really one of informing the decision-makers "of public opinion or specific issues without weakening their responsibility to look more widely at the implications for the area and community as a whole" (RTPI 1985, para 17).

There is certainly an expectation of consultation and as has been mentioned before, the ombudsman reports are dominated by complaints from neighbours as the Local Ombudsman is often the only avenue of appeal. These people often feel excluded from the decision-making process, and, although the ombudsman cannot look at the merits of the

decision they are frequently sympathetic, and occasionally find a "technical" maladministration, for example, a minor alteration to a plan, on which to hang a finding of injustice felt by a neighbour.

This feeling of sympathy for individual third parties is seen in some of the reports, where maladministration has been found in cases where not only was a policy to consult not adhered to, but also where there was no policy, consultation being left to officer discretion, and no consultation had taken place. Maladministration has also been found where the judgement of officers had been based on inaccurate facts about third party interest, and where a neighbour had been given the wrong information.

Maladministration has also been found where the Circular 71/73 (DoE 1973) was not followed. Although the Association of District Councils have recommended that planning authorities should avoid adverse ombudsman findings by deliberately not adopting a formal policy about third party consultations, the ombudsman can still find maladministration for failure to consult. There was a case where the council had considered the ADC advice in deciding whether or not to consult, taking into account the possibility of a future ombudsman investigation. The Local Ombudsman held this to be an irrelevant factor when making that decision, and, found maladministration (510/J/82). Indeed, even without a policy on neighbour notification there is "no less a duty upon the planning officer to be fair and consistent in his approach" (TCPA 1980, p5).

The Sheffield Study survey revealed that four authorities had passed resolutions to have no guidelines, to evade the ombudsman's findings, in accordance with the ADC's advice. The Local Ombudsman, not surprisingly, dislikes such action, and is very much in favour of giving people "an opportunity to make their own views known about neighbouring developments if they wish" (CLA Annual Report 1980, para 41). They suggest that planning authorities should be responsible for notifying interested neighbours and supplying lists of applications to the local press and community organisations, while ensuring that

applicants display suitable site notices (para 44). The ombudsman also believes that it is not good administration for a local authority have a policy of doing no more than statute law requires. "The planning officers' motto should be 'when in doubt, notify'" (CLA Annual Report 1986, p15 para 44)

He also suggested that neighbours should be contacted directly by postcard if there is any "significant" development or adverse change of use on adjoining land, where development might entail overlooking or overshadowing, or if there is a "substantial amendment" to a proposal already notified (CLA Annual Report 1986, p15 para 44).

The Town and Country Planning Association (TCPA 1980) also believe that it would be helpful "if the planning authority had a definite policy for such local consultation, governing the types of application to be advertised locally, the means and extent of such and procedures for impartial consultation" (p5). Some planning authorities not only had a definite policy, but also produced guidance notes and information sheets for neighbours and other interested parties in planning applications.

A number of other good practices in relation to consultation were noted from the Sheffield Study survey response and from fieldwork. When deciding whom to consult, many officers stressed the importance of site visits, believing that it was not always possible to rely on ordinance survey maps, especially for houses in multiple occupation. Proforma letters were found to be better than postcards, and in order to encourage a response, some authorities issued pre-paid reply envelopes. An increasing practice was that of notifying in ethnic minority languages where this was relevant. The ombudsman, in a recent report (87/B/441) has suggested that councils should evolve a procedure for making development proposals known to people who were in the process of buying property likely to be adversely affected, and that in order to do this, the letter of notification should be addressed to "the occupier".



The best authorities reconsulted where there were alterations to the original application "where it was reasonable" to do so, and there were some authorities who not only consulted neighbours whose property physically adjoined that of the proposed development, but also a whole street or neighbourhood where it concerned a large development, or the development might have a dramatic impact on the community by, for example, increasing the traffic or noise in an area. Another good practice, in one of the London boroughs, was to inform objectors of the council's decision, and the reasons why permission was granted or refused. This can go some way towards allaying the fears of many objectors that their views are not taken into account.

Site notices were also used where a development was likely to have dramatic or widespread impact. Many officers preferred site notices rather than direct consultation, but their use was not universally acclaimed. Many officers expressed a dislike for site notices, an officer of one large metropolitan borough believing them to be an inefficient method of communication. Indeed, this authority had passed a formal resolution not to use them, unless legally required to do so. In response to the Sheffield Study survey, 47% (62) of authorities admitted that they did not use site notices except where they were statutorily required to do so. 42 of these respondents were opposed to site notices in principle, saying that they were often overlooked by the public and sometimes vandalised.

In order to aid the planning process, 89% (115) of respondents to the survey supplied lists of planning applications to the local press. Although 25% of respondents expressed some reservations about their use, 73% thought that they were a valuable and cheap method of public notification. Lists were also provided to parish councils. With the aid of computers, several authorities found that they were able to compile and supply lists of applications relatively cheaply, and many have substantial mailing lists. Authorities had different policies for charging for these lists, and costs could be a deterrent to some groups and organisation. Some authorities only charged commercial

concerns, and community groups had a concessionary rate, or were not charged at all.

Another developing practice which needs commending is the willingness of some authorities to make further information and advice easily accessible to possible objectors. Many would-be complainants were satisfied once the planning officer had explained the extent and impact of a proposal. There is still room for improvement. The London Planning Aid's survey included a "public involvement charter" (Evans 1985, p27), suggesting that interested parties should be informed whether, for example, something is to be dealt with by delegated powers, and that there should be access to the reports of committees.

Few would deny the right of the public to become involved in the planning process, and neighbours and other third parties now have an expectation that they will be consulted over proposals which may affect them. Consultation may reduce the number of planning complaints, but it may also cause complaints, when, for example, the correct procedures have not been complied with. There is also the view that "public expectation exceeds the limit of planning custom, practice and law", and that neighbours "very often find it difficult to appreciate that the planning authority may not agree with their views" (Rae 1985, p19). Given the inevitability of conflict situations in the planning process, the authorities which seem to deal best with problems are those that have deliberately sought to make the process more accessible and have adopted a "negotiation" style. These practices will be discussed in the next section

#### Negotiation and Accessibility

McAuslan (1975) notes that planning is a problematic area because there has to be a process of decision making which ensures that the relevant information is gathered together, but that decisions have to be taken without due delay and those people likely to be affected by the decision have to be given an adequate opportunity to make their

views known (p6), and he concludes that the types of decisions taken in planning are so disparate "that no one solution to the problems outlined above has so far emerged" (p6).

Given these problems, and given the fact that people do not take naturally to restrictions upon the development of their own private property, those authorities visited during the Sheffield Study which seemed to have the best approach were the ones which adopted a "negotiation" style rather than a conflict one. They believed that the way to overcome problems was to educate and persuade people about the necessity for planning and then to spend considerable time explaining what alterations might be necessary to an application in order for it to succeed. These authorities also displayed a willingness to hold site meetings and round table discussions and conferences.

This informal approach is vindicated by the Department of the Environment which believes that:

"Before a disappointed applicant for planning permission lodges a planning appeal ... there should be consultation and negotiation between the parties and other bodies or individuals affected. Discussions of this kind can often resolve difficulties more quickly and cheaply than appealing. An appeal is intended to be, and should remain, a last resort" (DoE 1981)

The Department also believes that early informal discussions with applicants and their agents is to be encouraged, so that applicants can consider the scope for adjusting the scheme prior to formal submission (DoE 1983, para 8[iiii]). Samuels (1986) also concludes that in relation to the applicants challenging a decision "negotiation or renegotiation with the local planning authority, probably with a fresh application, is likely in practical terms to be the most promising line to pursue" (p818).

Some authorities visited during the Sheffield Study were convinced of the need for this type of approach, and, paradoxically at first, these were the authorities which rejected very few applications. For example, only 5% to 10% of applications were rejected in these authorities, which compares to a national average of 20%, which involves a "northern" average of 14% (see *Journal of Planning and Environment Law* 1990, p1). Officers in one authority spoke of the importance which the city gave to promoting development, and "the importance which development control staff give to advising and negotiating with applicants to produce acceptable schemes". This authority was obviously concerned about the environment and did not want development at any cost, but the authority was committed to "persuading, cajoling and educating the general public into a belief that planning was a collective concern" and that each of them had a part to play in creating a better community. The high number of successful applications was explained by painstaking liaison and negotiation, and this approach was more likely to achieve development which would benefit the city, while at the same time protecting the community from development which would damage the quality of the environment.

In another authority, there had been a conscious decision to adopt a "negotiating style" rather than placing a premium on arriving at a decision within the statutory eight weeks. They preferred to negotiate rather than reject and leave the matter to the statutory appeal mechanism. Such approaches are to be commended, and these authorities believed this was part of the procedures of a good planning department. However, in a recent case, an authority was making a charge of £25 for dealing with enquiries relating to speculative redevelopment or development proposals by prospective purchasers of land or property. The case (R v. Richmond upon Thames LBC ex parte McCarthy and Stone (Developments) Ltd (QBD) JPL 1989, p41) concerned judicial review, as the applicant contended that the respondent had no statutory authority to levy charges in respect of matters arising prior to the making of a planning application. It was decided that there was power to make the charge, and there was

judicial approval for pre-application consultations with the council's planning officers:

"It was quite clear that it was in everybody's interest that there should be discussions before parties submit their full application, between the developer and local authority, so everybody knows whether the scheme is likely to be succesful or not" (p44).

It was thought that £25 is a reasonable charge to make, but it was hoped that, should such "consultation" fees become widespread, it would not deter applicants from entering negotiations.

Authorities must also take care that these negotiations do not lead objectors to believe that the council are, as a result, biased in the applicants favour (see Local Ombudsman Report 87/B/001). The authorities visited during the Sheffield Study were unlikely to have such a charge levelled against them, as their approach involved negotiation and accessibility for objectors and the general public, as well as the applicant.

One London borough had an active consultation process and encouraged public participation, trying to create an environment and procedures for "frank and open liaison and consultation". Most authorities had a general tolerance of the public at meetings, and good authorities allowed the practice of objectors speaking at meetings. This appeared to be a growing practice, whereby objectors could briefly present their case, and a practice which was supported by the Town and Country Planning Association, which believes than individuals and groups "with a legitimate interest in a planning application must have the right to speak, if desired, at the meeting deciding that application" (Evans 1985, p27). However, even the best authorities had to admit that the demands of clear, efficient and effective administration necessitated some limit on public involvement of this kind, and sometimes written summaries of objections, or representatives to speak on behalf of a number of objectors, was the best that could be offered.

One authority did allow neighbouring landowners or occupiers to personally present their objections if they wished. Both the applicant and objectors are allowed five minutes to present their case, and they are allowed lawyers or other representatives. The planning committee usually make their decision straight away, and reasons are given. Details of the hearing procedure are sent out with the neighbour notifications, and officers spoken to believed that the procedure filtered out a great deal of potential complaints.

Authorities have other procedures for bringing objections to the attention of the committee, where personal attendance is not available. Most summarise and present them as part of the general report, but one had a special proforma report with a space for objections. The members attention was thus drawn to the issue, whether or not there were any objections. Other authorities had special procedures to check that all objections were reported, and this was especially useful for those which were submitted between the preparation of the report and the committee meeting. Sometimes, all the letters of objection were readily available for members, as well as the written summaries.

The Local Government (Access to Information) Act 1985 has given increased rights to the public in relation to knowledge about local government decision-making, and planning is no exception. The public are thus allowed access to committee meetings of the planning authority (Local Government Act 1972, section 100A); to have access to agendas (section 100B), minutes (section 100C) and background papers (section 100D). These new enactments "greatly strengthen the hands of any seeker after planning and development information when he approaches the appropriate local planning authority in his search for knowledge" (Heap 1987, p188).

Such wider public access to information, "should result in more informed decisions and reduce the risk of decisions justifying challenge" (RTPI 1985, p7 para 29). The Royal Town Planning Institute believes that total public access to council and committee meetings is

essential and that "more open decision-making is less likely to be partisan, and subject to challenge and in the long term may prove more cost effective" (p7 para 31). Such views were held by planning officers in some of the better authorities visited during fieldwork. All this confirms the view that planning is a "highly complex decision-taking process which exhibits many of the characteristics associated with bargaining" (Lichfield 1989, p43). Those authorities with the best practices seem to have recognised this fact.

### Conclusion

Planning, and in particular development control, exhibits a basic tension. There is a need to provide speedy decisions on planning applications, but there is also a need to reconcile this with the extensive consultation adopted by some authorities. This consultation process itself raises awareness and expectation, and people often feel a sense of grievance when the decision goes against them. The high number of complaints about planning to the Local Ombudsman is just one indication of the problematic nature of this area of local government work, a problem exacerbated by the fact that it is the middle classes who often feel aggrieved by planning decisions, and these are the very people who are more likely to complain.

Few would now deny the right of the public to become involved in the planning process, and the views of the public need to be sought to inform the decision makers. However, the Sheffield Study research found a disturbingly high level of "officers know best" attitudes within planning departments, and an emphasis on the "professional, impartial" approach, which appeared to spurn the members as mere amateurs. Such an approach "reduces the democratic and representative nature of government" (McAuslan 1980, p261), and allows little hope of public participation. These authorities seemed unconcerned about the level of complaints, and the low level of complaints procedures within planning departments seemed to be a reflection of this attitude.

However, there were good authorities which saw the necessity for participation and consultation, and those authorities with the best ombudsman records were the ones which had consciously adopted a "negotiating style" with applicants, along with widespread public participation. Not only did this result in fewer ombudsman complaints but it also meant that more applications were successful and therefore it was less likely that there would be appeals to the Secretary of State. This approach did not result in developers pursuing their proposals irrespective of objections from third parties, but rather enables objections to be overcome by negotiation and modification. These authorities recognised that planning is not merely a technical exercise. In order to discover the likely impact of a proposal on the environment it is necessary, in most cases, to take the views of those affected by a proposal. This approach, therefore, feeds more information into the decision-making process, and is less likely to arouse a sense of grievance in those affected.

Of course, there are no easy solutions in this area, and an approach which involved third parties in the planning process "has to be balanced .... with practical consequences" (Crawford 1988, p254). The applicant does, at least, have the right to appeal to the Secretary of State. The public, too, need some input before permission is granted, as it is practically impossible to overturn permission once granted. While it is difficult to suggest blanket policies for all authorities, I can do no better than endorse the views of the London Planning Aid Service, which suggest that such policies be based on basic principles which "focus around informing people in ample time, about planning applications affecting them, providing people with opportunities to state their views on those applications and enabling people to participate in decisions on those applications" (Evans 1985, p26).



## CONCLUSIONS

This study was ambitious in its aims; to provide an overview of the use of complaints procedures in local authorities in England; to examine in more detail procedures in service areas within authorities; and to draw some conclusions about the advantages of such procedures and their effectiveness. It was also an attempt to set complaints procedures in a theoretical context, both within a democratic culture, and also in relation to the managerial imperatives of organisations.

The evidence revealed that only a small number of local authorities had complaints procedures which were applicable across the whole range of the authorities' work. Where there were procedures, some were in disuse; sometimes officers and members had no knowledge of them; and publicity for consumers was non-existent or patchy. Few authorities actually encouraged complaints or comments from consumers. The procedures themselves, in many cases, were little more than a suggestion that a dissatisfied consumer could pursue his or her complaint through the organisation's hierarchy until it finally reached the chief executive, or appropriate member, or committee. Despite this, there were authorities with very good procedures, and with a level of investigation of complaints which were certainly of the same standard of that of the Local Ombudsman, but these were so few as to be remarkable.

As far as the service departments were concerned, experience varied considerably, both in terms of the extent of such procedures, and the perceived necessity and desirability for them. There was very much a departmental view, which had little to do with the central, authority view of complaints. Social services and planning departments were examined in more detail to illustrate the use of complaints procedures and to try to uncover some of the reasons for the divergence of views across departments.

The evidence revealed that most officers wanted matters to be settled internally, and there was little support for the extension of the use

of appeals to ministers, the courts or independent tribunals. It was found, however, that when there were such external appeal mechanisms, there was more emphasis on attempts to settle matters within the authority, with internal systems being instituted to achieve this.

There was also little support for the introduction of a statutory obligation to provide complaints procedures, with many officers feeling that this was, in some way, an attack on the idea of local democracy. Set against this was the finding that the public saw the advantages of, and would like, such procedures. From the study, it appears that there has been little progress on the voluntary side, and therefore, I believe that there should be a broad statutory obligation for the introduction of complaints procedures. The increase in the volume of complaints to the Local Ombudsman, since the abolition of the member filter, indicates some problems within local authorities themselves, as dissatisfied consumers are turning to the ombudsman. The introduction of a complaints procedure would, at least, provide some mechanism within the authority for complainants, and hopefully reduce the number of Local Ombudsman complaints.

It was found that most disputes could be, and were, handled effectively at officer level, but the role and impact of the member on this process varied considerably, and there was differential involvement in the different service departments. There was some dispute and discussion about the role of members in complaint handling, and a number of officers were critical of their intervention. Although members do have an important role to play here, it was found that they have neither the time nor the expertise to deal satisfactorily with every type of complaint. Their effectiveness may also be diminished by the very tension which may exist between them and officers. This is said without prejudice to their important function on appeal committees for extreme cases, which is mentioned later.

There is also some member distrust by the general public, and some cynicism about the way that complaints appear to be taken up with more

vigour by opposition members than by members of the ruling party. Because of this, their role in dispute handling is limited, but, on the other hand, members have the ultimate legal responsibility for the running of the authority, and therefore an interest in complaints. Part of the way around this dilemma is to recognise the important role which members have, but to emphasise that the more appropriate role is, perhaps, in the creation of policies within which a complaints procedure can flourish, to allocate funds for its implementation, and to monitor the results (see NCC 1988, p23). Also, given the fact that ultimately members have the legal responsibility for the running of the authority, they have an important role to play as a tribunal of last resort within a formal complaints procedure.

Few officers saw the advantages of the use of complaints procedures for managerial purposes, that is, for monitoring and information gathering on policies and practices. There was little statistical analysis of complaints, mainly because few authorities kept statistics on a systematic basis, and also because few officers recognised the value of such analyses. This is in marked contrast to some of the newly privatised industries. For example, the gas industry has sophisticated methods of using complaints for quality control purposes. Some officers admitted that procedures had been changed as a result of complaints, but this was invariably done in an unsystematic way, as it relied on particular problems coming to the attention of officers of sufficient seniority to implement such a change. In this respect, the evidence from the U.S. indicates a more advanced use of complaints.

Despite the fact that this study, and others, found that the majority of the public seemed satisfied with local government, this does not prevent there being concern about those who are dissatisfied, particularly in areas like social services, where this dissatisfaction may never come to the surface. Complaints procedures would be useful in testing true satisfaction, particularly if people were encouraged to complain, and the process was not seen as somehow illegitimate.

It was found that complaints were mostly resolved at officer level, and invariably within the service department concerned. As this is the site of decision making, this is the proper place for the complaint to be resolved, but where a satisfactory result is not obtained at this level, the ability to take a complaint to an authority-wide procedure is desirable. The value of such procedures is that usually the chief executive's department oversees them, ensuring a more neutral stance, and, besides providing a fail-safe mechanism, providing a kind of administrative review of the complaint. The best procedures were found to be those which allowed for a personal appearance by the complainant, and such procedures emphasised the importance of giving clear reasons for decisions at all stages of the process. It was also evident that the few complaints which proved to be resistant were best handled by a sub-committee of members. Given the fact that the best procedures involved chief executives at some level, and given the fact that members are ultimately legally responsible, some work must be done by local authorities to establish the optimum relationship between chief executives and members in this area.

Despite the fact that individual service areas should have internal complaints procedures, authority-wide procedures are essential. In some areas of local authority work, departments are legally obliged to have complaints procedures, and I would agree with the National Consumer Council that in view of this, it "makes sense...to move towards a single coherent system" (NCC 1988, p19), because it creates consistency across departments; it ensures that all consumers have access to a procedure; and it clarifies and eases access for consumers. In addition, such a procedure could indicate that the authority, as a corporate body, was prepared to respond to consumer dissatisfaction. An ad hoc approach, which responds to specific regulations, does not necessarily encourage staff to think in terms of the consumer interest, but "could reinforce a grudging attitude towards legal requirements" (NCC 1988, p19). An authority-wide complaints procedure shows a commitment which runs throughout the whole authority.

This then leads to another important aspect of such procedures. It was found that some authorities had excellent sounding procedures, but they were never used. Procedures in themselves are not enough. Those procedures which worked well were where there were other good practices in the department, and where there was an attempt to change attitudes and change the culture. The authorities with a commitment to staff training in this area were the successful ones, so that the practice became an institutional response, rather than an individual response. A corporate change of attitude to complaints is also important, so that staff feel supported, and therefore less defensive. Those few authorities with complaints officers are to be commended, and it was found that where they are outside the management structure they can be more effective, as they can bring an independent element into the procedure.

What did become evident during the research was that different problems require different responses, so, for example, in social services departments the kinds of procedures needed to resolve a complaint about the allocation of resources may be different to that concerning the outcome of a professional decision. Procedures should take these matters into account, and what is needed is a broad commitment and general set of obligations and duties in relation to complaints, with specific procedures to fit particular needs.

Since the completion of the Sheffield Study, there are signs that gradually local authorities may be changing, and this change may be due, in part, to the Sheffield Study itself, as, on a number of occasions during the fieldwork, officers remarked that the research had alerted them to the need for a complaints procedure. The change is also due to the rise in consumerism, and the focus on the consumer has not only been relevant in the private sector. The European Commission speaks about the "third partner - the consumer", and the Consumer Affairs Division of the European Community is currently attempting to encourage consumerism in public authorities, as well as in the private sector. The fact that there is discussion about the setting up of a European Ombudsman Institute is also a recognition of the value of

dispute solving agencies outside the courts. The Next Steps Initiative (1990), too, emphasises the needs of consumers of organisations, and the aim of improving customer service. Much of this is about efficiency and economy, but, as has been argued in the thesis, efficiency is not just about money-saving, but about giving value for money, which calls for some measure of effectiveness.

The dangers and problems of the private sector model of the consumer, with its emphasis on competitiveness, has been discussed. Indeed the Next Steps initiative itself recognises the problems of using competitive language when it is inappropriate, as this creates "a gap between the rhetoric and the reality" (Next Steps Initiative 1990, p87). There are situations where private sector approaches are relevant, but the analogy cannot be strained too far, and the constraints placed on public sector managers, which are different to market forces, must be taken into account.

It is admitted therefore that the place of consumerism in the public sector is problematic, and has to be developed. However, despite being wary of the attempt to translate too readily the practice of the market to public sector bodies, the emphasis on the consumer has resulted in improvements in the public sector. In the recent annual report, the Local Ombudsman has recognised that the idea of customer care can only be good for the consumer, and a factor likely to reduce complaints. He notes that it is some of the most 'value for money'-conscious councils which have introduced excellent complaints procedures, and which are looking at complaints and consumer satisfaction from the angle of performance review (CLA Annual Report 1989/90, p30).

This emphasis on internal complaints procedures does not ignore the necessity for the Local Ombudsman. No matter how good the internal procedures, there is still a need for an outside body, an external check on the authority. All the evidence points to the fact that the Local Ombudsman has been a force for the good in local government, and that officers within authorities show a great deal of respect for the

ombudsman. Not only do authorities welcome the intervention of the Local Ombudsman when there are particularly resistant cases, but there is increasing evidence of enquiries from local authorities about good practice, which are not prompted by particular complaints or findings of maladministration (see CLA Annual Report 1989/90, p30).

Section 23 of the Local Government and Housing Act 1989 provides for the Commission to give advice and guidance about good administrative practice, but a recent communication with the Local Ombudsman's office revealed that nothing concrete has happened concerning the implementation of this section. The position as at October 1990 is that the Commission has not yet published any guidelines or information for local authorities on good administrative practice in general. The Local Ombudsman is asking for resources to implement the section, but as yet, no-one has been appointed to oversee this area of work. Discussions are taking place within the office, and there is an intention to publish good practice guides for authorities in the future.

The Local Ombudsman's methods may, in many cases, be an ideal way of resolving a problem, as, on the one hand, an authority's investigation held in private may not command public confidence. On the other hand, a formal public enquiry can be costly and have adverse effects on staff morale. The Local Ombudsman, having "flexible investigative procedures", has an advantage over these two methods (see CLA Annual Report 1989/90, p5).

There is no doubt that many authorities respond in a positive way to the Local Ombudsman, and that the Local Ombudsman has been responsible for improving procedures generally within authorities. But, despite this, the emphasis should still be on resolving complaints within the authority, and the most effective way of doing this is by the use of a complaints procedure.

The role of the courts should also not be ignored, but the aim should be, as with the Local Ombudsman, to keep matters out of the courts as

far as possible, and only to use them as a last resort. An advantage of having statutory appeals mechanisms involving the courts is the way that this encourages authorities to use negotiation and other internal procedures to resolve problems, in an attempt to keep matters out of the courts. This is one of the advantages of an external check.

Although there is evidence of change, and that authorities are seeing the necessity for complaints procedures, there is much work to be done in this area. The role of the consumer has to be established, and connections have to be made between the public and the private provision of services. The role of the member, the courts and the Local Ombudsman also need further discussion in relation to the part they play in access to justice for individuals. The argument for clear and accessible complaints procedures seems to have been won, and now few would deny that good procedures and well trained staff are "the best safeguard for clients" and in the interests of "professionals and the wider public" (NCC 1988, p6). What is now needed, and what the debate is focussing on, is how this can be translated into practice. This debate will, no doubt, continue for some time in the future, and this thesis is, hopefully, a contribution towards it.



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